

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

74-2299

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2299

REID LAURENCE FELDMAN, ADM'R

Plaintiff-Appellee

—against—

ALLEGHENY AIRLINES, INC.

Defendant-Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S APPENDIX



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RELEVANT DOCKET ENTRIES

DATE	ENTRY
3/ 8/73	Complaint filed
5/13/73	Answer filed
9/28/73	Motion for Leave to Amend Complaint
10/17/73	Above motion granted Stipulation dated 11/15/73 approved 1/11/74
4/16/74	Court trial commences
4/17/74	Court trial continues. Case completed at 4:15 p.m.
5/ 6/74	Stipulation filed
5/ 6/74	Stipulation re Exhibit 19 (probate decree) filed and approved
5/31/74	Plaintiff's Exhibit 20—Letters of Adminis- tration filed
8/ 2/74	Memorandum of Decision
8/12/74	Motion for a New Trial
8/12/74	Judgment filed
9/ 9/74	Defendant's Motion for a New Trial denied
9/23/74	Notice of Appeal filed
10/ 3/74	Notice of Cross-Appeal filed

COMPLAINT

Plaintiff, by his attorneys, Sosnoff, Cooper & Whitney and Covington & Burling, complains of the defendant as follows:

COUNT I: FOR DAMAGES DUE TO INJURIES AND DEATH

1. The jurisdiction of this Court is founded upon 28 U.S.C. § 1332. The plaintiff is a citizen of the State of Maryland and the defendant is a corporation organized under the law of the State of Delaware with its principal place of business outside the State of Maryland. The amount in controversy exceeds \$10,000, exclusive of interest and costs.

2. Prior to the commencement of this action, plaintiff was properly appointed as personal representative of the Estate of Nancy Hollander Feldman, deceased, a citizen of the State of Maryland at the time of her death, pursuant to an order of the Circuit Court of Montgomery County, Maryland, sitting as the Orphan's Court for that County.

3. On June 7, 1971, the defendant, whose principal business is the transporting of passengers for hire as a scheduled common carrier, owned, operated and controlled a certain Allison Prop Jet Convair 440 aircraft, also known as a Convair 580 aircraft, bearing registration Number N5832.

4. On June 7, 1971, the aforementioned Aircraft No. N5832, while making a landing approach to the Tweed-New Haven airport at New Haven, Connecticut, crashed on land at a place approximately one mile from the airport and burst into flames and exploded.

5. On June 7, 1971, Nancy Hollander Feldman was a passenger for hire aboard Aircraft No. N5832 at the time

it crashed. The crash resulted in her suffering personal injuries, consciously experiencing pain, contemplating disaster and ultimately caused her to die.

6. The crash of Aircraft No. N5832 on June 7, 1971, and the resultant injuries to and death of Nancy Hollander Feldman were caused by the defendant in that it:

- a. Negligently operated and controlled the aircraft;
- b. Violated and deviated from applicable federal regulations and from procedures promulgated by the defendant;
- c. Failed to promulgate safe standards and procedures for approaches to and landings at the Tweed-New Haven airport even though it had experienced or had known of two similar accidents;
- d. Initiated an approach to and attempted to land on a runway which applicable rules adopted by the defendant prohibited from use under the circumstances then prevailing;
- e. Descended far below the minimum authorized altitude when the runway threshold, runway lights and other markings were not clearly visible to the pilots of the aircraft;
- f. Failed to maintain adequate air speed to facilitate a missed approach;
- g. Failed to initiate a missed approach when the aircraft was below the minimum authorized descent altitude;
- h. Failed to report meteorological conditions relating to the safety of the aircraft;
- i. Failed to alert and warn passengers aboard the aircraft of the existence, location and operation of doors and emergency exists;
- j. Failed to warn passengers that a landing approach was about to be or was then being conducted;
- k. Failed to train adequately the crew of the aircraft;
- l. Induced its pilots, including the pilot of Aircraft No. N5832, to conserve flight time at the expense of safety;

- m. Assigned one rather than two stewardesses to serve aboard Aircraft No. N5832; and
 - n. Failed in other respects to take the care which a reasonable man would take in the circumstances.
7. On June 7, 1971, Nancy Hollander Feldman was, and still is, survived by her husband Reid Laurence Feldman, who is the exclusive beneficiary of the Estate of Nancy Hollander Feldman, deceased, including the proceeds of this action. By this action Reid Laurence Feldman seeks recovery on his own behalf for the loss of consortium and companionship he has suffered as the result of the death of his wife, Nancy Hollander Feldman and for such other damages as he may properly recover on his own behalf. In his capacity as Personal Representative of her Estate, he seeks recovery of just damages for the injuries and pain sustained by Nancy Hollander Feldman; for her death, the value of her life, and the destruction of her capability to carry on life's activities, to engage in gainful employment and to participate in worthy community activities, for her funeral expenses and for such other damages as he may properly recover in such capacity.

8. By reason of the acts of the defendant alleged above, the plaintiff is entitled to recover from the defendant in the amount of \$800,000.

COUNT II: CLAIM FOR PUNITIVE DAMAGES

1. Plaintiff repeats and realleges herein paragraphs 1-7 of Count I.
2. The crash, injuries and death described in paragraphs 4 through 6 were the result of the defendant's wanton misconduct, reckless indifference to the rights of Nancy Hollander Feldman and others, and reckless disregard for the consequences the defendant knew or should have known would result from those acts.

3. By reason of the defendant's wanton and reckless misconduct the plaintiff is entitled to receive punitive damages, including the expenses of this litigation and attorneys fees, in the amount of \$200,000.

WHEREFORE, plaintiff demands judgment against the defendant on Count I in the amount of \$800,000 and an additional sum on Count II in the amount of \$200,000 together with interest from June 7, 1971, costs, disbursements and such other relief as the court may deem proper.

[*Signed by Attorneys for Plaintiff*]

ANSWER

FIRST COUNT

1. Paragraphs 3, 4, that portion of Paragraph 1 which states "and the defendant is a corporation organized under the law of the State of Delaware with its principal place of business outside the State of Maryland." and Paragraph 5, except for the phrase "resulted in her suffering personal injuries, consciously experiencing pain, contemplating disaster and ultimately", which phrase the defendant does not have sufficient information or knowledge of upon which to base a belief and leaves the plaintiff to his proof.
2. Paragraphs 6 and 8 are denied.
3. As to Paragraphs 2, 7 and the remainder of Paragraph 1, the defendant does not have sufficient information or knowledge upon which to base a belief and leaves the plaintiff to his proof.

SECOND COUNT

1. The answers to Paragraphs 1 through 7 of the First Count are hereby incorporated and made the answers to the corresponding paragraphs of the Second Count as if fully set forth herein.
2. Paragraphs 2 and 3 are denied.

[Signed by Attorneys for Defendant]

**MOTION FOR LEAVE TO
AMEND COMPLAINT**

Plaintiff, Reid Laurence Feldman, by his attorneys, pursuant to Rule 15(c) of the Federal Rules of Civil Procedure, herewith moves the Court for leave to amend his complaint by substituting the word "a" for the words "the exclusive" in the third line of paragraph 7 thereof. As the reason for such change, plaintiff states that under the law of the State of Maryland, the surviving parents of the decedent are entitled to 50% of the proceeds of the decedent's estate, and plaintiff, in his individual capacity and as the decedent's surviving husband, is entitled to the remaining 50% of the proceeds of the decedent's estate. Md. Ann. Code. Art. 93, § 1.

[*Signed by Attorneys for Plaintiff*]

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the parties to the above captioned action through their undersigned counsel that:

1. Defendant Allegheny Airlines, Inc., is legally responsible for the death of plaintiff's decedent, Nancy Hollander Feldman, and is therefore liable to plaintiff in an amount to be determined by the court.
2. Plaintiff Reid Laurence Feldman, both on his own behalf and in his capacity as representative of the estate of Nancy Hollander Feldman, in consideration of the above stipulation of responsibility and liability by Defendant hereby waives all claims and rights either he personally or the estate of Nancy Hollander Feldman may have had to punitive or exemplary damages.

Dated: November 15, 1973

[*Signed by all Counsel*]

STIPULATION

Plaintiff and defendant herein, by their undersigned attorneys, stipulate and agree as follows:

1. Paragraph 2 of the Complaint is hereby amended so that the following sentence is inserted after the first sentence of said paragraph: "Plaintiff is the duly appointed Ancillary Administrator in Connecticut of the estate of Nancy Hollander Feldman by reason of the decree and order of the Probate Court of Hartford County."
2. Paragraph 3 of the Answer is amended to admit the statement in the amended complaint as set forth in paragraph 1 of this Stipulation.
3. The heading of the Complaint shall be amended to reflect the agreement as set forth in paragraphs 1 and 2 of this Stipulation so that said heading shall contain the added description of Plaintiff as Ancillary Administrator and shall read as set forth in the heading at the top of this Stipulation.

Dated May 6, 1974

[Signed by all Counsel]

STIPULATION

Plaintiff and Defendant hereby stipulate and agree as follows:

1. The attached Plaintiff's Exhibit 19 (the decree of the Probate Court of Hartford County, Connecticut, appointing Reid Feldman as ancillary administrator of the Estate of Nancy Hollander Feldman) shall be received in evidence in this case.
2. All previous stipulations and agreements between the parties in this case are hereby reaffirmed and readopted and remain in full force and effect.

May 6, 1974.

[*Signed by all Counsel*]

JUDGMENT

This cause having come on for trial before the Court, and the issues having been duly tried and the Court having rendered its Memorandum of Decision under date of August 2, 1974, disallowing the award of funeral expenses, dismissing the plaintiff's suit on his own behalf with prejudice and awarding the plaintiff as the administrator of the estate of the decedent the total sum of \$444,056.00 as just damages for the wrongful death of Nancy Hollander Feldman,

It is ORDERED and ADJUDGED (1) that this action be and is hereby dismissed as to the plaintiff's suit on his own behalf, with prejudice; and (2) that the plaintiff as the administrator of the estate of Nancy Hollander Feldman, deceased, recover of the defendant the sum of FOUR HUNDRED FORTY-FOUR THOUSAND FIFTY-SIX DOLLARS (\$444,056.00).

Dated at New Haven, Connecticut, this 12th day of August, 1974.

[*Signed by Clerk*]

MEMORANDUM OF DECISION

This is a wrongful death action arising under Conn. Gen. Stats. § 52-555 which was brought by the surviving husband as administrator of the estate of Nancy Hollander Feldman,¹ who was killed in the crash of Allegheny Airline's Flight 485 on the morning of June 7, 1971, near New Haven, Connecticut. Allegheny having stipulated to its responsibility for Mrs. Feldman's death, and the plaintiff having reciprocally waived any claim to punitive damages, trial was had to the Court on the issue of damages. Assessment of damages for the death of Mrs. Feldman requires consideration of several factors.

I

The pattern of the decedent's life was still evolving at the time of her death and must be described in some detail in order to demonstrate the bases for the Court's conclusions as to what course her life would probably have taken in the future.

College Years

Nancy Hollander was reared in a Maryland suburb of Washington, D.C., and entered the University of Pennsylvania as a freshman in 1964. Her grades in college rose steadily from a "C" average as a freshman to "B" and "B+" averages in her upper division years, leaving her

¹ Prior to filing the complaint herein the plaintiff had been appointed personal representative of the estate of the decedent by order of the Circuit Court of Montgomery County, Maryland, sitting as the Orphan's Court for that county. Pursuant to the Court's suggestion, and without objection by the defendant, the plaintiff during the course of the trial applied to the Connecticut courts for appointment as Ancillary Administrator in Connecticut of the estate of Nancy Hollander Feldman. Such an appointment was duly ordered by the Probate Court of Hartford County on May 6, 1974, and by agreement of the parties and the Court this appointment was entered in evidence before the Court and the complaint was amended to reflect the plaintiff's appointment as Ancillary Administrator in Connecticut of the estate of Nancy Hollander Feldman.

with a cumulative "B" average of 2.94 on a scale of "A" = 4. She was the recipient of a Department of Justice scholarship throughout college, and was active in student government. She was also involved in the nether reaches of the federal government for four successive summers during her college years. She began as a secretary for the National Institutes of Health in 1964, and spent the next three summers in the Office of the Solicitor of the Department of Labor, rising from legal secretary to research assistant to budget analyst by the summer of 1967. Shortly after receiving her Bachelor of Arts degree in English Literature in May of 1968, she married plaintiff and accompanied him that fall to New Haven, Connecticut, where he commenced studies at the Yale Law School.

Ante-Mortem Employment

Mrs. Feldman's employment in New Haven reflected a continuing interest in and ability to obtain work relating to governmental functions and processes. After some temporary secretarial jobs she secured a position as a research assistant with the New Haven Legal Aid Association. Her principal task there was development of a cost-benefit analysis of the Association's operations. She also performed para-legal research work, such as preparing studies of residents of New Haven neighborhoods when such data was pertinent to litigation being conducted by the Association. The following summer of 1969 she worked for the Equal Employment Opportunities Commission in Washington. In September of 1969 she joined the urban affairs consulting firm of Cogen, Holt & Associates (Cogen, Holt) as a professional associate, and remained in this position until her death.

Cogen, Holt had been formed in 1968 by, among others, Joel Cogen, formerly General Counsel to the New Haven Redevelopment Agency. When the decedent became associ-

ated with the firm in 1969, it had a total staff of about ten persons, and has since nearly tripled in size. Clients include Yale-New Haven Hospital, the Yale School of Medicine, private foundations, and public housing and redevelopment authorities. In addition the firm provides complete staff services for the Connecticut Conference of Mayors and Municipalities, an organization representing cities and towns before Congress, the state legislature, and state and federal administrative agencies, acting basically as a lobbyist for municipal interests.

Mrs. Feldman's work with Cogen, Holt involved her principally with the Conference of Mayors. She began as a legislative analyst doing research for other members of the firm, but as she acquired experience she worked more directly with the client and with the targets of the client's lobbying. In the words of Mr. Cogen, who himself serves as Executive Director of the Conference, "there was this thread of research analysis administrative work that gradually increased in the responsibility and, in fact, in exposure to the public. It was in the closing days of her work for us that she had become increasingly involved in highly complex legislation and, in fact, at the very end was working very closely with the legislators, members of the General Assembly, and indeed was doing direct lobbying at the State Capitol in the last days she worked for us."²

Her interest in her work was intense; she worked hard and enthusiastically and genuinely impressed her employers. Mrs. Kathryn Feidelson, another partner in Cogen, Holt who worked with the decedent on projects for the Conference of Mayors, testified that she had "a remarkable degree of analytic ability, a skill in using numbers, statistical analysis. But apart from the intellectual skills she had personal skills which made her able to deal with a wide variety of people, as well as administrative skills,

² Reporter's Transcript (R.T.) at 95.

a thorough commitment, a sense of responsibility, a talent for following up projects in which she was working."³

Mr. Clarence Heimann, currently Director of Project Development for the Connecticut Resources Recovery Authority, was First Selectman for Trumbull, Connecticut, for the twelve years from 1961 to 1973. He was president of the Connecticut Conference of Mayors and Municipalities in 1971 and 1972, and was vice-president of that organization in 1970. In these capacities he dealt directly with the decedent. He was "very much impressed" with her abilities: "I would describe her as being an attractive and intelligent and articulate person; someone who had the ability to order her thoughts and to be able to present them in a fashion that people could readily understand. She had a unique ability, in my opinion, in this area. As a relatively young person she seemed far more mature than her age in her ability to engender thinking and to encourage participation by people who were, in many cases, her superior in age and perhaps station in life."⁴

The circumstances leading to Mrs. Feldman's death are illustrative of her commitment to her work. She and her husband having both grown up in the metropolitan Washington area, they had determined to settle there. She had accordingly arranged to leave Cogen, Holt for what she anticipated would be similar employment in Washington, and had begun exploring opportunities in Washington for employment as a legislative analyst. For instance, she had approached a representative of the United States Conference of Mayors who was attending the annual meeting of the Connecticut Conference of Mayors, and had gained an optimistic impression of her chance of employment with the United States Conference of Mayors. She also had an alternative field of endeavor open to her, since she had applied to and been accepted by the George Washington

³ R.T. at 117-118.

⁴ R.T. at 161.

University Law School for admission in the fall of 1971. Her husband having finished law school, she drove with him and their belongings to Washington on the first weekend in June 1971, as he was about to take the District of Columbia bar examination. But her contribution to Cogen, Holt had become significant enough for her presence there to be required for one last week, notwithstanding her change of residence. In Mr. Cogen's words, "we had three days left in the [legislative] session and she was handling some very crucial legislation on which she had done the research, analysis, the drafting, and she had close contacts with the key legislators on those bills and we needed her back because it was essential to get those bills passed."⁵ Mrs. Feldman accordingly embarked on Allegheny's morning flight to New Haven on the Monday after the couple's move to Washington.

Ante-Mortem Earnings

The decedent's earnings during her years in New Haven corroborate her employers' testimony as to her professional competence and her bright prospects for employment and advancement in the Washington milieu. During the approximately nine months she worked for New Haven Legal Assistance, she earned \$5,054.62, which reflects an annual rate of approximately \$6,700. Her summer job with the EEOC in 1969 earned her \$991.71, and various other odd jobs brought her total earnings for the year beginning September 1968 to \$6,544.33. Her starting salary in September 1969 at Cogen, Holt was \$6,500. Her salary was increased to \$7,500 in May 1970, to \$9,000 in November 1970, and finally to \$10,000 in May 1971. In just 20 months at Cogen, Holt her salary thus rose by 54 per cent. Mr. Cogen stated that had she remained at Cogen, Holt the decedent would have continued to receive annual raises of

⁵ R.T. at 95.

at least \$1,000 per year and possibly substantially more to reflect cost of living increases. For example, the young woman hired to replace Mrs. Feldman began at \$10,000 per year but was given an increase to \$13,500 about one year later.

II

At the time of her death the decedent had not accepted nor even formally applied for employment in Washington. Her record justifies her apparent confidence that she could easily find suitable employment in Washington once she was finished with her work at Cogen, Holt, her husband was through the bar examination, and they had had a brief vacation. And, of course, her having won admission to law school provided a stimulating and ultimately profitable alternative to immediate continuation of her career as a legislative analyst, should the job market have proved less fertile than she imagined. While predictions as to the precise course her future career would have taken may not be made with certainty, the Court has not the slightest doubt that the qualities of intelligence, aggressiveness, enthusiasm and tenacity which she demonstrated in her working life would have carried her far, especially in view of the fact that she was pursuing a career in and about the federal government at the very time when the equalization of career opportunities for women was emerging as a major federal policy.

Evidence of Employment Opportunities

The possibilities which lay open before Mrs. Feldman in June of 1971 are illustrated by the remarkable ascent in the career of Mr. Steven Bourke, who entered the Washington governmental job market at the same time as and with remarkably similar credentials to the decedent's. Mr. Bourke testified that he joined Cogen, Holt in the late summer or early fall of 1968, just after the firm's inception,

at a starting salary of \$6,000 per year. By the time he left Cogen, Holt 34 months later to take a job in Washington, his salary had risen to \$13,500. The job he took in Washington in the summer of 1971 was as a legislative analyst for the Committee on Public Works of the House of Representatives, and paid \$17,500 annually. He later took a position on the staff of the Chairman of the Public Works Committee at \$20,000 annually. In this capacity he was offered a salary of \$34,000 per year if he would agree to remain in that position as a permanent professional staff assistant. He declined this offer, however, and instead became, in the fall of 1973, one of two analysts of national legislation reporting directly to the Speaker of the House. In this new capacity as the Assistant Director of the House Democratic Steering and Policy Committee, Mr. Bourke earns an annual salary of \$30,000 at the age of 28.

Mr. Bourke entered on his career upon graduating from college in the same year, 1968, with the same degree, a Bachelor of Arts, in the same subject, English Literature, with the same average, just below a "B" overall, as did the decedent. The only educational distinction is of no significance: Mr. Bourke graduated from Yale, Mrs. Feldman from Pennsylvania. While each institution no doubt has its chauvinistic proponents, the Court need make no judgment as to the relative merit of the educational opportunities afforded by either. It suffices to take judicial notice that the educational programs of the two are sufficiently similar for them to be commonly grouped together as members of the elite "Ivy League." Any difference in prestige or "market value" between degrees from the two schools is deemed by the Court to be *de minimis*, especially in terms of an employer's ultimate decision to hire a given applicant for a given job.

In addition to their similar educational credentials, Mr. Bourke and Mrs. Feldman brought almost identical on-the-job experience to the Washington job market. Like the

decedent, Mr. Bourke performed legislative analysis for Cogen, Holt, and indeed spent half his time with Cogen, Holt working on legislation for the Connecticut Conference of Mayors and Municipalities. The only discernible difference between their experiences at Cogen, Holt was Mr. Bourke's additional year of employment there, Mr. Bourke having joined the firm directly out of college while Mrs. Feldman spent her first post-graduate year with the New Haven Legal Aid Association.

Mr. Bourke himself felt that Mrs. Feldman's qualifications for work in the legislative field "were virtually the same" as his own when in June of 1971 they were both considering seeking work in Washington.⁶ He personally had no trouble getting a job in Washington as a legislative analyst, since Cogen, Holt had provided him with "excellent background and training for that sort of work."⁷ Indeed, when Mr. Bourke first went to Washington he was offered, but declined, a \$20,000-a-year job as legislative counsel for the National League of Cities and United States Conference of Mayors (NLC/USCM), the national counterpart of the Connecticut Conference of Mayors and Municipalities.

Mrs. Feldman's job prospects in Washington were further explored by plaintiff through the deposed testimony of Mrs. Dorothy Rodmann, the manager of the personnel department of NLC/USCM, an organization of about 250 employees of whom about 20 are engaged in legislative analysis. This organization adheres directly to the federal government's "General Schedule" (GS) of civil service salaries, in recognition of the federal government's leadership in setting pay scales for professionals in the District of Columbia area. NLC/USCM employs legislative analysts at salaries equivalent to GS-10 through GS-14.

A Program and Legislative Research Assistant at NLC/USCM is a GS-10, which in 1971 encompassed an annual

⁶ R.T. at 129.

⁷ R.T. at 130.

salary range of \$11,517 to \$14,973. Such a job bears the general description:

"To assist the Federal Legislative Representative in a highly responsible manner in the performance of in-depth research and analysis and the performance of certain essential and time-consuming routine duties; enabling the Federal Legislative Representative to give primary attention to accomplishing the cities' federal legislative goals, securing federal grant assistance, and assisting city officials as necessary on Washington visits."⁸

An associate Counsel in Mrs. Rodmann's organization is a GS-11, who in 1971 was paid a salary of \$12,615 to \$16,404. This position is described by NLC/USCM as:

"Work with federal agencies, the U.S. Congress, local governments and public and special interest groups to develop and implement NLC and USCM policy positions. Work with state municipal leagues and provide staff assistance to NCL/USCM policy committees. Develop analytical materials as a result of these activities for dissemination through NLC and USCM."⁹

Finally, the position of Counsel with NLC/USCM rates a salary level of GS-12 through GS-14, which in 1971 covered a range of \$15,040 to \$27,061. The duties of this position are described as:

"Work with the U.S. Congress, agencies of the Federal Government, municipal governments, public and special interest groups, and other interested parties, to develop and implement policy positions of the National League of Cities in the U.S. Conference of Mayors. To relate different work as required by the NLC/USCM, and the Director of Congressional Relations. Develop working relationships with members of Congress and staff for the purpose of securing legisla-

⁸ Reporter's Transcript of deposition of Dorothy P. Rodmann, April 11, 1974 (D.T.), at 16-17.

⁹ D.T. at 17.

tive implementation of the policy positions of the National League of Cities in the U.S. Conference of Mayors. Work with state municipal leagues. Staff assign policy committees of the National League of Cities and U.S. Conference of Mayors."¹⁰

Based on the decedent's resume,¹¹ Mrs. Rodmann expressed the opinion that Mrs. Feldman would have been qualified in 1971 for a GS-10 position in the NLC/USCM legislative research program, at a starting annual salary of \$11,517. Mrs. Rodmann also testified that a person such as Mrs. Feldman who had worked for the Connecticut Conference of Mayors would be in an advantageous position in seeking employment through her with NLC/USCM. "I think, certainly, in our organization that it is an advantage to have someone with working experience in local government and most particularly with one of our counterparts at the local level."¹²

Additional evidence of the decedent's job prospects came from several sources. Mr. Cogen of Cogen, Holt was familiar with Washington employment opportunities in the field of legislative analysis through his occasional business trips to Washington as Executive Director of the Connecticut Conference of Mayors and Municipalities and as a member of the Board of Directors of NLC/USCM. He testified that there were far more opportunities for employment in legislative analysis in Washington than in Connecticut, at much higher salary levels. He would have given Mrs. Feldman a "strong recommendation" for the position at NLC/USCM, comparing her "very favorably" to others in her field.¹³ Mr. Cogen was familiar with the position of

¹⁰ D.T. at 18.

¹¹ At the time of her death, Mrs. Feldman had not yet prepared an updated résumé for use in seeking employment in Washington. Mrs. Rodmann was given the decedent's 1969 résumé and a hypothetical résumé reflecting the decedent's additional job experience at Cogen, Holt. See page 24, *infra*.

¹² D.T. at 19.

¹³ R.T. at 99.

legislative counsel at NLC/USCM and felt the decedent was qualified for this position, at the lower salary range provided for that position.

Mrs. Feidelson, also a partner in Cogen, Holt, and Assistant Director of the Connecticut Conference of Mayors and Municipalities, testified that she would have given the decedent "a strong and very good recommendation" for another professional job in the field of legislative analysis.¹⁴ Mrs. Feidelson had had a discussion with Mrs. Feldman about the decedent's career plans just a week or ten days before her death. "I remember it rather clearly because we were riding up to Hartford together to work at the General Assembly and we discussed this subject specifically. She indicated to me that she wanted to pursue a career, that she at the same time was interested in having a family and thought that she might take time out for that family, but that she would always return to a job. She was for that reason rather interested in the way my career had gone because I, too, had had a family, had taken time out and returned to work. So there were certain analogies."¹⁵

Mrs. Feidelson's own career does indeed suggest the feasibility of the decedent's hoped-for combination of pursuing a professional career while raising a family. Mrs. Feidelson has three children, whose current ages range from 26 to 19. After receiving a Bachelor of Arts degree from Vassar in 1947, Mrs. Feidelson worked until 1948 and then did not work until 1962, when she took a job with the New Haven Redevelopment Agency. She started working full time for Cogen, Holt in 1969, at a salary of \$10,200, which had risen to \$21,000 by 1972. She became a partner in that year, and in that capacity earned approximately \$30,000 in 1973.

¹⁴ R.T. at 120.

¹⁵ R.T. at 118.

Mr. Heimann, the former First Selectman of Trumbull, testified that the decedent had had "a very fine future" in the field of legislative analysis,¹⁶ and that in his capacity as chief executive of the town of Trumbull, he would have employed her any time she might have chosen to leave Cogen, Holt. In the summer of 1971 such employment in the municipal government of Trumbull would have carried a salary of between \$9,000 and \$10,000 per year.

The defendant produced just one witness on the subject of the decedent's employment prospects. Mrs. Diana Donald is a partner in an urban planning consulting firm based in Farmington, Connecticut, and engaged in projects throughout Connecticut.¹⁷ Her firm currently has 12 partners and employees and has varied in size from half that to twice that. The professional staff is composed primarily of "planners," who are directly responsible for projects; "research associates" or "research assistants" are also employed on occasion to assist the planners. Six or seven such assistants have been employed during the ten years the firm has been in existence. The qualifications required for the job are a Bachelor's degree and the ability to do responsible work under supervision. The last such assistant hired was a woman who had just received a B.A. from Smith College. She joined the firm in 1969 at a \$6,500 salary and was making \$7,020 per year when she left somewhat more than a year later. The firm's planners who are not partners currently make from \$10,000 to \$16,000 annually. One of the firm's current non-partner planners is a woman who joined the firm as a research assistant with a Bachelor's degree. After seven years with the firm she is now a planner and

¹⁶ R.T. at 161.

¹⁷ Her firm, while similar to Cogen, Holt in some respects, is essentially a planning firm, and thus she recognized a difference in their orientation; nonetheless their work tends to overlap insofar as planning does involve research into and coordination with federal and state legislative policies. Her firm pays salaries which are competitive with other such firms in Connecticut. The numbers of positions available with such firms has declined somewhat over the last five to six years, however, due to a reduction in federal aid for municipal planning and related activities.

makes \$15,000 per year. Mrs. Donald herself has a \$16,000 annual salary plus a share in the firm's profits which amounted to \$6,000 in 1973.¹⁸

Mrs. Donald did not feel that her being a woman had handicapped her in her profession. She has had two children, now aged 10 and 12, during her 14-year career. She took six months off after the birth of her first child, then worked part-time for 18 months until the birth of her second child. After this birth she returned to work full time.

III

Measure of Damages for Destruction of Earning Capacity

Connecticut law, which is controlling in this diversity case brought in Connecticut on a cause of action which arose in Connecticut, see, e.g., *Erie v. Thompkins*, 304 U.S. 64 (1938); *Patch v. Stanley Works*, 448 F.2d 483, 487 (2d Cir. 1971), sets forth a measure of damages for wrongful death which makes the loss of future earning capacity a major, but not the exclusive element of recovery. As was stated in Connecticut's leading case on the subject, *Floyd v. Fruit Industries, Inc.*, 144 Conn. 659, 669-670, 671 (1957):

"Damages for wrongful death, as such, are allowed as compensation for the destruction of the decedent's capacity to carry on life's activities, including his capacity to earn money, as he would have if he had not died. [Citation omitted.] In the case of one who is employed, especially one who earns a relatively large income, . . . the destruction of earning capacity may well be the principal element of recovery resulting from the death. . . ."

[D]amages for wrongful death, under the basic sur-

¹⁸ Mrs. Donald is active in the national affairs of the American Institute of Planners. She testified that the Executive Director of this organization, which is based in Washington, makes \$30,000 per year. He is 41 or 42 years of age, and was first a city planner, then an assistant director of NLC/USCM before becoming the administrative head of the American Institute of Planners.

vivorship theory of our law, are assessed on the basis of the loss to the decedent had he lived, and, except in that sense, not on the basis of loss to his estate. It follows that in many respects damages are assessed in the same way as in a nonfatal case involving a total and permanent destruction of the capacity to carry on life's activities....

When destruction of earning capacity, that is, the capacity to carry on the particular activity of earning money, is to be compensated for, the inquiry in the first instance is as to probable net earnings, in the ordinary sense of that phrase as used in accounting practice, during the probable lifetime."

The Court's first task in the instant case is thus to assess Mrs. Feldman's capacity or capability to engage in gainful employment at the time of her death and throughout the rest of her working life, and to estimate the "probable net earnings" which the decedent would have accrued had her opportunity to realize income from her employment capability not been destroyed by the defendant's admitted negligence.

In discharging this task, the Court is mindful that "[t]he whole problem of assessing damages for wrongful death . . . defies any precise mathematical computation." *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 675. However, unlike a jury, the Court feels under an obligation to give a reasoned account of the facts and the law which lead it to resolve in a particular fashion a controversy submitted to it by the parties. When the parties waive their rights to a jury trial and rest their fortunes with one person instead of six or twelve, they are entitled to some indication of how that solitary trier of fact has viewed the evidence. And, since no instructions to the jury are in the record to establish the Court's view of the law, a detailed memorandum of decision is essential to preserve a meaningful opportunity for appellate review of the Court's decision. Accordingly, the Court has provided for the benefit of the

parties in this case a comprehensive recitation of the findings, assumptions, computations, and conclusions by which it has arrived at its decision herein. This should not be taken as betokening a lack of appreciation by the Court that the task before it defies reduction to ultimate detail. In dealing with "the familiar elements of permissible damages in death cases," the Court has maintained the perspective mandated by the Connecticut Supreme Court: "Suffice it to say that, except for the special expenses allowable under the statute, all these elements are, of necessity, imponderable and largely speculative. No one can place a definite value upon them, nor can one do more than conjecture as to what the future course of any life, if continued, would have been. At best, the trier must take the evidence and make an intelligent estimate." *Fairbanks v. State*, 143 Conn. 653, 659 (1956).

Returning to the immediate task at hand, it must be emphasized that compensation is based on the loss of earning capacity, not future earnings per se. See *Morrison v. State*, 516 P.2d 402, 404-405 (Alaska 1973). See also the cases collected at 25 C.J.S. § 40, at 727-728, nn. 60-63 (1966); Annotation, 151 A.L.R. 479, 494-495, nn. 36-38 (1944). The Court's duty is to evaluate the financial worth of lost earning capacity, or "net earning power." *McKirdy v. Cascio*, 142 Conn. 80, 86 (1955). This involves "an inquiry into the value of the person's capacity to earn money by his labor, physical or intellectual." *Davis v. P. Gambardella & Son Cheese Corporation*, 147 Conn. 365, 370 (1960). The past earnings of a salaried person are "merely evidence in aid of the establishment of the value of the earning capacity and do not, in themselves, fix the value." *Id.*

Since earning capacity, and not earnings themselves, is the measure of damages, the Court is only indirectly concerned with whether the decedent would in fact have utilized her earning power at any given time so as to produce

actual income. In our society one is free, within the constraints of the need for self-sustenance, to do with one's time as one wishes. While many thus spend their time in essentially non-remunerative familial, intellectual, aesthetic, or athletic pursuits, this does not mean that their time is economically valueless. Even if one lacks any significant earning capacity, one obviously places a value on one's capacity to carry on life's activities, and the destruction of this more general capacity is compensable under Connecticut law. *Chase v. Fitzgerald*, 132 Conn. 461, 470 (1946); *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 670. When a person who does possess significant earning capacity chooses, as is her right, to forego remunerative employment in order to follow other pursuits, such as child-rearing, that person manifestly values those pursuits at least as highly as the sacrificed remuneration, and the loss through wrongful death¹⁹ of the opportunity to engage in non-remunerative occupations may thus fairly be measured by reference to the earning capacity possessed by the decedent.

It is, however, necessary to make a reasonable estimate as to the course the decedent's life would have taken throughout her working years, in order accurately to assess her capacity to earn money at any given point in time. Earning capacity is an organic concept, as mutable as life itself. The probable objectives of the decedent in her career and her progress towards realizing them are material to estimation of the job skills she would have acquired and maintained over time. These job skills in turn govern, in terms of their probable economic value, the year-by-year monetary worth of the decedent's capacity to earn money.

¹⁹ It should be emphasized that the Court is here confronted by a wrongful death action rather than a personal injury action, wherein the injured person might have lost her earning capacity but not her capacity for at least some non-remunerative pursuits. In such a personal injury context, it might well be relevant to ascertain the extent to which the injured party would in fact have employed her lost earning capacity rather than follow the non-remunerative pursuits not foreclosed to her by her injury.

Basic Findings Regarding Decedent's Earning Capacity

It is hardly speculative to conclude that the decedent could have secured employment in Washington as a legislative analyst. Mr. Bourke's ease in obtaining such employment demonstrates that job opportunities abounded for persons with the interests, abilities, qualifications, recommendations, and motivation of the decedent. This is especially so with respect to positions within NLC/USCM, which organization was obviously impressed with the substantially similar qualifications of Mr. Bourke, and within whose councils Mrs. Feldman could rely on the favorable support of Messrs. Cogen and Heimann.

Less certain is the conclusion that Mrs. Feldman would in fact have accepted such employment in preference to enrolling in law school. The Court believes the addition of a law degree to Mrs. Feldman's qualifications could only have increased the *prima facie* value of her job skills and her determination to hone those skills through a professional career. Thus the Court's conclusion that she would probably have eschewed law school in favor of immediate employment as a legislative analyst, represents an election of the more conservative alternative in terms of her net lifetime earning capacity.

Turning to the finding on which is based the valuation of the decedent's initial earning capacity as a legislative analyst in Washington, the probabilities established by the evidence adduced at trial point to the decedents having accepted such employment with NLC/USCM. The decedent had expressed to a national representative her interest in working for NLC/USCM, and had been given grounds for optimism in that regard. Mr. Cogen, the Executive Director of the Connecticut Conference of Mayors and Municipalities and a member of the Board of Directors of NLC/USCM, was prepared to give her a strong recommendation, as was Mr. Heimann, the President of the Connecticut

Conference of Mayors. Mrs. Rodmann, head of NLC/USCM's Personnel Department, stated that the decedent's experience with the Connecticut Conference of Mayors would have given her an advantage in seeking employment with NLC/USCM. And finally, Mr. Bourke, with a year longer at Cogen, Holt but otherwise similar qualifications, received a job offer from NLC/USCM during the very summer in which the decedent would have been seeking a job.

Mrs. Rodmann felt that the decedent would have qualified for a GS-10 position as a legislative researcher at NLC/USCM, with a starting salary of \$11,517 per year. However, this assessment of the decedent's qualifications was based solely upon Mrs. Rodmann's review of two documents. See note 10, *supra*. The first of these documents was a one-page resume prepared by Mrs. Feldman when she was still with the New Haven Legal Assistance Association, before joining Cogen, Holt. The second was a hypothetical resume prepared by Mrs. Feidelson of Cogen, Holt after Mrs. Feldman's death, consisting of a one-page recitation of Mrs. Feldman's qualifications in standard resume form, attached to which were 19 pages of copies of reports and memoranda prepared by Mrs. Feldman in the course of her employment at Cogen, Holt. Although perhaps reasonable in view of the limited basis for her appraisal of the decedent, Mrs. Rodmann's conclusion at the time of her deposition that Mrs. Feldman was qualified only as a GS-10 was unduly conservative from the perspective of the more complete evidence before the Court. As set forth previously, see page 12, *supra*, the NLC/USCM GS-10 job of "Program and Legislative Research Assistant" is described as entailing basically a research function, with actual lobbying reserved for the "Federal Legislative Representative" for whom the research assistant works. This is just the sort of work the decedent performed initially at Cogen, Holt. Evidence not before Mrs. Rodmann but

before this Court establishes that Mrs. Feldman had assumed direct lobbying and client contact responsibilities at Cogen, Holt by the time of her death. Her responsibilities at Cogen, Holt—the very responsibilities which mandated her ill-fated return to New Haven—were more akin to those attributed by NLC/USCM to the GS-12 position of legislative Counsel, whose duties include the development of "working relationships with members of Congress and staff for the purpose of securing legislative implementation of the policy positions of the National League of Cities in the U.S. Conference of Mayors." See p. 13, *supra*.

The Court's conclusion that the decedent would have been hired by NLC/USCM as a GS-12 rather than a GS-10 is supported by the testimony of Messrs. Cogen and Bourke. Mr. Cogen opined that Mrs. Feldman was qualified for the position of legislative counsel with NLC/USCM, at the lower end of the salary range for that position. Mrs. Rodmann testified that the legislative counsel position carried a GS-12 to GS-14 salary. Mr. Bourke was himself offered a position with NLC as legislative Counsel at \$20,000 per year. This was an advanced GS-13 salary on the 1971 GS scale, just below the lowest salary step at the GS-14 level. It accordingly is reasonable to conclude that Mrs. Feldman, with substantially the same qualifications as Mr. Bourke save for one year less experience with Cogen, Holt, would have warranted at least the lowest GS-12 salary of \$15,040 per year. Indeed, in view of the salary offered to Mr. Bourke this seems a conservative estimate.

Before moving on to an assessment of the probable increase in earning capacity which Mrs. Feldman would have experienced during her working life, a word is appropriate on the extent to which the decedent's course in life can fairly be compared to the considerable success in the same sort of work enjoyed to date by Mr. Bourke. Obviously Mr. Bourke possesses intangible qualities which have as-

sisted his professional advancement, qualities which may well distinguish him significantly from the decedent despite the rather striking analogies between their formal qualifications. It is impossible to reconstruct the decedent's personality from the bare record of this case with sufficient precision to allow a completely accurate comparison with Mr. Bourke. Mrs. Feldman possessed intelligence, self-confidence, and skill in inter-personal relationships. How far these valuable qualities would have carried the decedent cannot be established with certainty.

It would thus hardly be fair to attribute to the decedent the same accelerated rise in her profession experienced by Mr. Bourke. But neither can it be ignored that the decedent, if not likely to have progressed step-by-step with Mr. Bourke, would not likely have lagged far behind. Among the intangible qualities conducive to professional success with which the decedent may fairly be credited is a knack for knowing people in the right places. Mr. Bourke was a personal friend and close working companion of the decedent when both were in the relative wilderness of New Haven. Mr. Bourke's ascent in Washington may not have been matched by the decedent's, but his rising star could not but helped to have lighted the path of her own career.

Probable Increases in Earning Capacity Throughout Decedent's Career

Mrs. Rodmann of NLC/USCM testified in her deposition that in her organization, whose salary program tracks the federal government's General Schedule pay scales, employees customarily receive an annual in-grade increment in pay based on satisfactory performance during the year. This increment, of between three and three and one-quarter per cent, coincides with the in-grade steps on the GS scales, which provide for ten salary levels or "steps" within each salary grade, such as GS-10 or GS-12. Because the higher steps of one grade may carry a salary greater than the

lower steps of the next higher grade, when an employee is promoted by NLC/USCM to a higher grade, she enters that grade at a sufficiently advanced step for her to receive the usual incremental salary increase. This policy of incremental salary increases based on continued satisfactory performance is independent of any cost-of-living adjustments to the salary schedule as a whole.

The Court finds it reasonable to conclude that the decedent's earning capacity would have increased according to the general pattern at NLC/USCM, i.e., with yearly increments as provided in the federal government's GS pay scales.²⁰ This conclusion, although itself a less-than-certain assumption, serves to eliminate a great deal of speculation because of the precise evidence before the Court as to salaries and promotions at NLC/USCM. Moreover, since the salary schedules of NLC/USCM are the same as the federal government's and are thus reflective of salaries throughout the metropolitan Washington area, the accuracy of future earning capacity valuations based on NLC/USCM salaries is not wholly dependent on the assumption that the decedent would have remained with NLC/USCM all her working life. The Court accordingly finds that from a salary of \$15,040 as a first-step GS-12 for the fiscal year beginning July 1, 1971,²¹ the decedent would have moved up the GS scale

²⁰ The defendant's expert on the economics of computing future earnings did not disagree with the plaintiff that annual salary increases could reasonably be expected to have been awarded to the decedent as a matter of course. However, the defendant would have limited such increases to a flat \$500 per year. *See page 38, infra.* While reference was made in his written report to nationwide statistics on annual income growth, no evidence relating specifically to the facts of this case was adduced to support the expert's opinion as to this \$500 figure, and the expert was not shown to have any special experience with or knowledge of white-collar salaries in the District of Columbia. Indeed, this \$500 figure was contrary to the evidence adduced by both sides as to likely salary increases which the decedent would have received had she remained employed in Connecticut. The decedent herself had received salary increases totalling \$3,500 in less than two years. And Mrs. Donald testified for the defendant that a woman with only a B.A. degree, who had been hired in 1967 as a research assistant—a position carrying a \$6,500 salary in 1969—now is a planner with her firm at a salary of \$15,000 per year.

²¹ The use of the July 1 date not only serves the convenience of the Court but also reflects the fact that some time would necessarily have been

first through the ten steps of the GS-12 grade, and then through the higher steps of successively higher grades.²²

The plaintiff testified that his wife, the decedent, anticipated working about five years in Washington before ceasing work temporarily to have a family. The five-year period represented the decedent's estimate as to the time required to establish herself in her career, and also reflected the decedent's desire not to postpone her having children much beyond her 30th birthday. She and her husband planned to have "perhaps two children,"²³ and she was intent on devoting most of her time to her children until they were old enough to attend school, which her husband felt would have been six or eight years after she stopped working. The decedent did, however, hope to remain in contact with her profession as a legislative analyst and lobbyist, perhaps through part-time work during her child-rearing years, so as to enable her to resume her career when her children were in school.

The Court finds that the decedent would have spent eight years in which her principal occupation was child-rearing. This figure not only reflects the conservative side of her husband's estimate, but also falls squarely in the middle of the range of a professional woman's likely hiatus from her principal occupation in order to raise a family, insofar as that range was established at trial by the evidence of Mrs. Feidelson's 14 years away from work while raising her three children, and of the approximately two years' absence from full-time employment experienced by Mrs. Donald in raising her family.

taken for job hunting and possibly a vacation between the time the decedent would have finished her work with Cogen, Holt and the time she would have started work with a new employer in Washington.

²² The Court assumes that in moving from one grade to another, the decedent would have moved to that step in the higher grade paying a salary higher than her salary at the highest step in the next lower grade, even though the percentage increase in pay received by such a promotion to a higher grade was not as large as the approximately three per cent increment normally received upon moving up a step within any grade.

²³ R.T. at 45.

During these eight years, however, the Court finds that the decedent would have remained in sufficient contact with her field of endeavor, by part-time employment or otherwise, to maintain her earning capacity at the level it would have reached by the time she would have left her job to embark on child-rearing. Thus while her earning capacity would not have increased during these eight years, it would also not have decreased.

Both parties adduced testimony from experts on the calculation of future earnings, and each such expert assumed that there were 40 years left in the decedent's working life at the time of her death. The Court adopts the parties' assumption of a 40-year working life for the decedent.²⁴ Thus the Court deems it reasonable to assume that (1) the decedent would have retired at the age of 65; and that (2) following such retirement, her employability and earning capacity would be virtually nil. Unlike her consciously temporary withdrawal from employment in order to raise a family, the decedent's retirement could not reasonably be expected to have been accompanied by the retention of some residual earning capacity nourished by the intent to return to full-time employment at a later date. No evidence was presented that the decedent would have continued in her

²⁴ The parties entered into the following stipulation:

1. Nancy Hollander Feldman was 25 years of age at the time of her death;
2. Nancy Hollander Feldman was in good health immediately preceding the accident which caused her death;
3. A white woman aged 25 years has a life expectancy of 52 additional years."

No evidence was introduced tending to show that the decedent's earning capacity would probably or even possibly have been impaired by some future disability. Indeed, the autopsy of her body found no abnormalities or manifestations of disease. See page 65, *infra*. In view of the decedent's stipulated good health at the time of her death, the lack of any evidence showing she was prone to the loss of that good health, *cf. Butler v. Steck*, 146 Conn. 114, 122 (1959) (dissenting opinion), and the essentially cerebral and sedentary nature of her occupation, the Court finds that even "with due allowance for the effect which the ordinary vicissitudes of life might have had upon [her] continued enjoyment of [her] capacities," *Chase v. Fitzgerald*, *supra*, 132 Conn. at 470, the decedent would have had a 40-year working life.

chosen vocation past the age of 65, which both parties' experts took to be the normal age of retirement. Nor was the decedent shown to have any potentially remunerative avocational talents. Compare *Waldron v. Raccio*, Conn. L. J., July 9, 1974, at 6, 9 (Conn. 1974); *Ray v. United States*, 277 F.Supp. 952, 953-955 (D. S.C. 1968); *Cuneo v. Philadelphia Transportation Co.*, 176 A.2d 896, 898-899, 405 Pa. 532 (1962).

Lifetime Valuation of Decedent's Earning Capacity

It is now possible, on the basis of the assumptions and findings heretofore made and justified, to assign a dollar value to the decedent's earning capacity in each of the 40 working years she had remaining to her at the time of her death. This can be accomplished by determining from the 1971 GS pay scales of the federal government the salary payable at each of the GS grades and steps within grades in terms of which the Court has defined the decedent's earning capacity for those 40 years. However, it must be realized that the values thus attributed to the decedent's year-by-year earning capacity represent "1971 dollars," i.e., dollar amounts not inflated to account for the reasonably expected decrease in the real purchasing power of the dollar amounts the decedent was capable of earning in each year remaining in her working life. According to this valuation process, the value of the decedent's earning capacity for "fiscal 1972," the fiscal year beginning July 1, 1971, is the 1971 salary for the first step in GS-12, \$15,040. This increases over the next four years, so that for fiscal 1976 the decedent's earning capacity is \$17,044, the 1971 salary for the fifth step in GS-12. The decedent's earning capacity then remains unchanged over the next nine years—eight years of child rearing and the decedent's first year of employment thereafter. In 1986 the decedent's earning capacity goes up to the sixth step in GS-12, \$17,545, and continues to rise thereafter one step at a time, with each

change of grade being from the tenth step in one grade to the fifth step in the next higher grade. In the fortieth year, fiscal 2111, the decedent is at the seventh step of GS-16, with a 1971 salary of \$33,757. See generally Table I, *infra*, p. 60.

Deduction of Probable Income Taxes

However, Connecticut law does not permit the loss to the decedent's estate caused by the destruction of the decedent's earning capacity to be measured through simple addition of the year-by-year earnings which that earning capacity was capable of producing. "[I]n measuring a person's actual loss from a permanent and total destruction of earning capacity, whether by death or injury, there is an important factor which must be offset against probable net earnings. That factor is any saving in income tax liability which can properly be attributed to a cessation of earned income." *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 671.

The parties differed in their calculations of probable tax rates. The defendant's expert credited the decedent with one-half the couple's standard deduction and her personal deduction and calculated the tax upon the remaining taxable income by reference to current tax rates on joint returns. This method yielded a rate of tax of approximately 16.7 per cent of gross income when gross income was \$16,000. The plaintiff's expert used Internal Revenue Service figures for the average taxes paid at various income levels and derived a tax rate of approximately 23.4 per cent for a gross income of approximately \$16,000, rising to 30 per cent for a gross income of approximately \$27,000. The Court believes substantial justice may be achieved in this uncertain area by applying a flat tax rate of 25 per cent for each of the 40 years in question.

IV**Ascertainment of Present Value**

The Court now has the basis for computing, year by year, the net loss to the decedent due to the destruction of her earning capacity as measured by the value of that earning capacity less the requisite deduction of her probable income taxes. However, Connecticut law requires that the Court allow, "as far as destruction of earning capacity is concerned, for the fact that a present payment will be made in lieu of sums which, had [the decedent] lived, would have been received at periodic times in the future." *Chase v. Fitzgerald, supra*, 132 Conn. at 470. An appropriate discount rate must thus be determined for the purpose of reducing to its value in 1974, see pages 53-57, *infra*, the amount of money which the decedent's earning capacity has been determined to be worth in each of the remaining years of her working life. This discount rate must reflect the probable rate of return on a prudent investment, so that the discounted total amount of loss suffered through destruction of earning capacity will, if prudently invested, earn enough interest for the total amount of damages and accumulated interest to cover exactly the periodic payments the decedent would have received had she had the opportunity to harness through employment her capacity to earn money.²⁵

²⁵ Connecticut law requiring the discounting to present value of a lump sum award of damages for the destruction of future earning capacity has not been explicated in any detail, and appears to be based on common sense and the common law. *Chase v. Fitzgerald, supra*, 132 Conn. at 469, relies solely on *Jackiewicz v. United Illuminating Co.*, 106 Conn. 310, 314 (1927), as authority for the present value rule set forth in *Chase*. *Jackiewicz* in turn cites only an obscure Pennsylvania case, *Kost v. Ashland Borough*, 236 Pa. 164, 84 A. 691, 692 (1912), which makes merely a passing reference to present worth as a factor to be considered by a jury, and concentrates, as does *Jackiewicz* itself, on the factors to be considered by a jury in first setting the lump sum whose present worth must be computed.

In the light of this lack of elaboration of the Connecticut rule on discounting lump sum awards to present value, it may fairly be assumed that Connecticut courts seek only to apply the traditional common law

The problem in determining a fair discount rate is the difficulty of anticipating what effect inflation will have on interest rates in the future. Traditionally discount rates

rule, as masterfully restated by the Supreme Court in an early case under the Federal Employers' Liability Act, *Chesapeake & Ohio R. Co. v. Kelly*, 241 U.S. 485, 489-491 (1916):

"So far as a verdict is based upon the deprivation of future benefits, it will afford more than compensation if it be made up by aggregating the benefits without taking account of the earning power of the money that is presently to be awarded. It is self-evident that a given sum of money in hand is worth more than the like sum of money payable in the future. Ordinarily a person seeking to recover damages for the wrongful act of another must do that which a reasonable man would do under the circumstances to limit the amount of the damages. [Citations omitted.] And the putting out of money at interest is at this day so common a matter that ordinarily it can not be excluded from consideration in determining the present equivalent of future payments, since a reasonable man, even from selfish motives, would probably gain some money by way of interest upon the money recovered. Savings banks and other established financial institutions are in many cases accessible for the deposit of moderate sums at interest, without substantial danger of loss; the sale of annuities is not unknown; and, for larger sums, state and municipal bonds and other securities of almost equal standing are commonly available.

"Local conditions are not to be disregarded, and besides, there may be cases where the anticipated pecuniary advantage of which the beneficiary has been deprived covers an expectancy so short and is in the aggregate so small that a reasonable man could not be expected to make an investment or purchase an annuity with the proceeds of the judgment. But, as a rule, and in all cases where it is reasonable to suppose that interest may safely be earned upon the amount that is awarded, the ascertained future benefits ought to be discounted in the making up of the award.

"We do not mean to say that the discount should be at what is commonly called the "legal rate" of interest; that is, the rate limited by law, beyond which interest is prohibited. It may be that such rates are not obtainable upon investments on safe securities, at least without the exercise of financial experience and skill in the administration of the fund; and it is evident that the compensation should be awarded upon a basis that does not call upon the beneficiaries to exercise such skill, for where this is necessarily employed the interest return is in part earned by the investor rather than by the investment. This, however, is a matter that ordinarily may be adjusted by scaling the rate of interest to be adopted in computing the present value of the future benefits; it being a matter of common knowledge that, as a rule, the best and safest investments, and those which require the least care, yield only a moderate return.

"We are not in this case called upon to lay down a precise rule or formula, and it is not our purpose to do this, but merely to indicate some of the considerations that support the view we have expressed that, in computing the damages recoverable for the deprivation of future benefits, the principle of limiting the recovery to compensation requires that adequate allowance be made, according to circumstances, for the earning power of money; in short, that

have been determined by reference to the return provided by "risk-free" investments, such as obligations of the federal government. It was thought that, since there was virtually no risk of loss, the rate of return received by investors on this sort of obligation represented payment purely for the use of capital. It is abundantly clear, however, that one risk the federal government cannot extend a guarantee against, to its creditors or to its citizens, is inflation. Accordingly, contemporary investors have demanded a substantial premium in addition to payment for the use of their capital as compensation for the substantial risk that when they get back the money they have lent, that money will be worth significantly less in terms of real purchasing power than it was when it was lent. Expectations of inflation have accordingly driven up present interest rates to historic heights, even on "risk-free" obligations. Thus the evidence adduced at trial showed that the yield on one of the money market's standard measures of a "risk-free" rate of return, a three-month treasury bill, was 2.93 per cent in 1960 and 8.57 per cent in April of 1974.

The defendant's expert insisted on the use of a six or seven per cent discount figure, somewhat below the current short-term "risk-free" rate of return because of the 40-year overall period to which the discount rate is to be applied, but nevertheless reflective of inflationary expectations in the money market. The defendant's expert did not, however, similarly incorporate inflationary expectations into his assumptions of the decedent's probable future earnings, crediting her only with \$500 annual salary increments in the early years of her career, without any cost-of-living adjustments. See note 20, *supra*. Thus the defendant's calculations achieved the self-serving result of minimizing the value of the decedent's probable future earning capacity by ignoring inflation, and then maximizing the amount by

when future payments or other pecuniary benefits are to be anticipated, the verdict should be made up on the basis of their present value only."

which that future earning capacity is to be discounted to present value by assuming the continuance of inflationary interest rates.

The plaintiff's approach was to avoid speculation as to inflation by evaluating the loss of the decedent's earning capacity in terms of "1971" dollars, with no account taken of the declining value of those dollars over time due to inflation. Plaintiff's expert then sought similarly to factor inflation out of "risk-free" yields so as to derive an "inflation-free" as well as a "risk-free" discount rate to apply to the monetary value of the decedent's year-by-year loss of earning capacity.

Consideration of Inflation by Other Courts

There is nothing novel about the trier of fact in a personal injury or wrongful death action taking account of inflation in computing truly compensatory damages. Over half a century ago, the Vermont Supreme Court was able to cite extensive authority for considering inflation in awarding damages.

"The result sought by the law in assessing damages in [tort] cases is compensation—so far as a money payment can—the ascertainment of such a sum as will compensate the plaintiff for the injury. Necessarily, damages are to be expressed in terms of money. And while money is the standard of value by which the worth of all other property is to be measured, and while, in theory, its value remains constant and unfluctuating, and while it must be admitted that really it is prices which rise and fall amid changing economic conditions, yet, after all, in a very real and practical sense money itself is a shifting standard, varying in value according to the changes in its purchasing power. As a medium of exchange, its value appreciates or depreciates according to the rise and fall in commodity prices. So it is that, at least so far as those elements of damages properly classed as pecuniary losses—

like loss of time, loss of earning power, expenses and the like—are concerned, it is proper for the jury to take into consideration the fact, known to everybody, that the purchasing power of money is at present seriously impaired." *Halloran v. New England Telephone & Telegraph Co.*, 115 A. 143, 144, 95 Vt. 273, 18 A.L.R. 544 (1921).

See also *Bowes v. Public Service R. Co.*, 110 A. 699, 700, 94 N.J.L. 378 (1920); *O'Meara v. Haiden*, 268 P. 334, 204 Cal. 354, 60 A.L.R. 1381, 1390 (1928).

Not surprisingly, expressions of judicial cognizance of the declining purchasing power of the dollar have tended to coincide with periods of pronounced inflation. The inflation experienced in the aftermath of World War Two was even more rampant than that which followed World War One, and produced a flood of opinions taking heed of inflation. "Consideration may properly be given the lessened purchasing and earning power of money," declared the Iowa Supreme Court in *Jackson v. Chicago, M., St.P. & P. R. Co.*, 30 N.W.2d 97, 105, 238 Iowa 1253 (1947). See also *Pauly v. McCarthy*, 184 P.2d 123, 127, 109 Utah 431 (1947); *Kircher v. Atchison, T. & S.F. R. Co.*, 195 P.2d 427, 434, 32 Cal.2d 176 (1948); *Western & Atl. R. Co. v. Burnett*, 54 S.E.2d 357, 367, 79 Ga. App. 530 (1949); *Nusser v. United Parcel Service of New York*, 65 A.2d 549, 552, 3 N.J.Super. 64 (App. Div. 1949); *Bethke v. Duwe*, 41 N.W.2d 277, 280, 256 Wis. 378 (1950); *Reinmuller v. Chicago Motor Coach Co.*, 93 N.E.2d 120, 125, 341 Ill. App. 178 (1950); *France v. Newman*, 248 S.W.2d 392, 396, 35 Tenn. App. 486 (1951); *Johnson v. Schrepf*, 47 N.W.2d 853, 858, 154 Neb. 317 (1951); *Ft. Worth & D.C. R. Co. v. Gifford*, 252 S.W.2d 204, 206 (Tex. Civ. App. 1952); *Wiest v. Twin City Motor Bus Co.*, 52 N.W.2d 442, 445, 236 Minn. 225 (1952); *Rogers v. Atl. Coast Line R. Co.*, 71 S.E.2d 585, 590, 222 S.C. 66 (1952). See generally, Annotation, 12 A.L.R.2d 611 (1950). Courts have continued to go on record up to the present day

as approving consideration of inflation in the computation of damages. See *Normand v. Thomas Theatre Corp.*, 84 N.W.2d 451, 457, 349 Mich. 50 (1957); *Willard v. Hutson*, 378 P.2d 966, 975-976, 234 Ore. 148, 1 A.L.R.3d 1092 (1963); *Barnett v. Trinity Universal Ins. Co.*, 286 So.2d 770 (La. App. 1973).

Although in sanctioning generalized consideration of past and present inflation by the trier of fact the above cited cases have implicitly permitted expectations of future inflation to influence an award of damages, some courts have remained reluctant to allow future inflation's effect on wages and prices to be explicitly taken into account in calculating damages. See *Beanland v. Chicago, R.I. & Pac. R. Co.*, 480 F.2d 109, 117, n.1 (8th Cir. 1973) (concurring opinion); 2 Harper & James, *The Law of Torts*, § 25.11, at 1325-1326 (1956). This reluctance seems to be grounded in a sound judicial aversion to speculation. See, e.g., *Sleeman v. Chesapeake & Ohio R. Co.*, 414 F.2d 305, 308 (6th Cir. 1969); *Frankel v. United States*, 321 F.Supp. 1331, 1346 (E.D. Pa. 1970), *aff'd* 466 F.2d 1226, 1229 (3rd Cir. 1972). "Yet," in the words of Judge Friendly, "there are few who do not regard some degree of continuing inflation as here to stay and would be willing to translate their own earning power into a fixed annuity, and it is scarcely to be expected that the average personal injury plaintiff will have the acumen to find investments that are proof against both inflation and depression—a task formidable for the most expert investor." *McWeeney v. New York, N.H. & H. R. Co.*, 282 F.2d 34, 38 (2d Cir. 1960) (footnote omitted).

It is not yet clear to what extent Connecticut courts in particular are prepared to recognize inflation as a factor in computing damages for the destruction of future earning capacity. The leading case dealing with instructions to a jury to consider inflation held such instructions improper on the facts of the particular case there in issue, but ex-

pressly reserved judgment whether a "case could arise in which it would be proper to charge the jury that they should take into consideration the depreciated value of the dollar in assessing damages." *Quednau v. Langrish*, 144 Conn. 706, 714 (1957). That case also noted that Connecticut law has often looked to the depreciating purchasing power of the dollar in comparing present awards of damages challenged as excessive with past awards for similar injuries. *Id.* The only other Connecticut case on the subject followed *Quednau* in holding that a requested instruction on inflation was properly refused, but like *Quednau* this holding was tied specifically to the particular facts of the case, which involved a 66-year-old plaintiff's loss of pre-trial but not future earning capacity. *Cooley v. Crispino*, 21 Conn. Supp. 150, 151 (Super. Ct. 1958).

Of course, so long as juries are not instructed specifically to exclude expectations of inflation from their calculations, they are likely to consider the impact of inflation on future earning capacity in rendering a verdict. Cf. *Willard v. Hutson*, *supra*, 378 P.2d at 976. It should also be noted that Connecticut is among the minority of states requiring damages for loss of earning capacity to be reduced by probable income taxes on the earnings which could have been derived from the lost earning capacity. *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 671-673. Cf. *Brooks v. United States*, 273 F.Supp. 619, 628-632 & n.17 (D. S.C. 1967); Annotation, 63 A.L.R.2d 1393 (1959). Thus Connecticut, unlike most jurisdictions, does not inflate judgments for personal injuries or wrongful death by ignoring the taxes payable on future earnings, and so denies to plaintiffs the very windfall which was cited by Judge Friendly as being offset, at least in part, by the failure of the law to allow explicitly for the effect of inflation on a lump sum money judgment. See *McWeeney v. New York, N.H. & H. R. Co.*, *supra*, 282 F.2d at 37-38.

Consideration of Inflation in This Case

In *Perry v. Allegheny Airlines, Inc.*, 489 F.2d 1349 (2d Cir. 1974), the Court of Appeals affirmed a \$369,400 jury verdict for another victim of the air crash involved in the instant case. Among the claims of error rejected in the *Perry* appeal was this Court's admission into evidence of the opinion of an expert as to the decedent's loss of future earning capacity, which opinion reflected "certain assumptions concerning future rates of inflation and interest." *Id.* at 1351. But the Court of Appeals noted that this Court had charged the jury that they were not bound by the expert's opinion. *Id.* at 1353.

In the instant case, the Court must reach a decision itself on the weight to be accorded the opinion evidence of the parties' respective experts. As adumbrated earlier, the Court agrees with the basic assumption of the plaintiff's expert that the value of the decedent's future earning capacity should be calculated in terms of "1971 dollars" by reference to the wages payable in 1971 at each step on the salary scale which the evidence established was likely to be traversed by the decedent during her working life. But see note 34, *infra*. The Court's adoption of this basis for evaluating lost earning capacity is not, however, based on any reluctance to consider inflation as a factor affecting the value of future earning capacity. Rather, the fortuitous availability of a reliable guide to the value of the decedent's lost future earning capacity offers a means to avoid undue speculation on the extent to which inflation as opposed to individual merit would contribute to the decedent's probable year-to-year increase in earning capacity. Thus, in this case the Court as finder of fact has chosen not to consider inflation in estimating in dollar amounts the damages suffered by the decedent's estate due to the destruction of her future earning capacity.

This presents the Court with the converse of the ques-

tion whether the finder of fact should consider inflation in evaluating the loss of future earning capacity: whether inflation should be considered in setting the interest rate by which the already assessed dollar amounts of damages for the loss of future earning capacity are to be discounted to their present value. Where inflation has indeed been considered in arriving at a dollar amount as compensation for lost future earning capacity, it follows that the same expectations of inflation must be applied to calculations of the probable future interest rates at which the award may be invested. See *Wilkinson v. Yamashita-Shinnihon Kisen, K.K.*, 366 F. Supp. 110, 117 (D. Md. 1973) [five per cent discount rate applied]. It is also clear that, even where inflation has *not* been taken into account in computing the dollar amounts of damages for lost future earning capacity, the present value of future earnings cannot be established without applying any discount at all upon the assumption that the yield to be expected upon prudent investment of the lump sum award will be *entirely* offset by future inflation. See *Sleeman v. Chesapeake & Ohio R. Co.*, 424 F.2d 547 (6th Cir. 1970), reversing 305 F.Supp. 33 (W.D. Mich. 1969).²⁶ If inflation is foreseeable enough to be considered by a court in setting the rate at which a lump sum is to be discounted to present worth, it is sure to be reflected in the interest rates at which that lump sum may be invested,²⁷ and thus the yield on a "risk-free" (except for

²⁶ But cf. *Beaulieu v. Elliott*, 434 P.2d 665, 671 (Alaska 1967), holding that in the interests of justice awards of damages for the loss of future earning capacity should not be discounted to present value, and referring to the offsetting effect of inflation as justifying this rule. This case may reflect exceptional conditions of inflation in a "frontier" state, which local conditions would not necessarily be reflected in the nationally oriented rates of return offered by "risk-free" investments such as debt instruments of the federal government and federally insured savings bank accounts. To the extent that it refuses to require discounting to present value on the basis of more generalized notions of justice and fairness, *Beaulieu* may also reflect another factor offsetting a plaintiff's recovery of "compensatory" damages: attorney's fees. Cf. *McWeeney v. New York, N.H. & H. R. Co., supra*, 282 F.2d at 38.

²⁷ "If an inflation goes on for a long time and is no longer 'unforeseen,' an allowance for a price rise may get itself built into the market interest rate. Thus, if we all expect prices to rise at 3 per cent per

inflation) investment in an economy in which inflation is expected will exceed the expected rate of inflation by an amount approximating the prevailing price of capital—"the earning power of money." *Chesapeake & Ohio R. Co. v. Kelly*, 241 U.S. 485, 491 (1916).²⁸ When, as in the instant case, inflationary factors have been expressly excluded from calculation of the sums to be discounted, the appropriate rate of discount is this price of capital, obtained by adjusting interest rates on "risk-free" investments so as to exclude the additional interest demanded by the investment market as compensation for investors' assumption of the risk of inflation.

Ascertainment of Inflation-Adjusted Discount Rate

The plaintiff's expert derived an inflation-adjusted discount rate of 1.5 per cent by comparing the average yearly increase in the Department of Labor's Consumer Price Index (CPI) over the past 18 years, 2.87 per cent per year, with the average rates of return on several types of essentially "risk-free" investments over the same period of time: 3.75 per cent for time deposits in members of the Federal Reserve Bank system; 4.14 per cent for deposits in all mutual savings banks; 4.24 per cent for deposits in some specific mutual savings banks; and 4.64 per cent earned from their investments by insurance companies, this latter figure being reflective of the rate of return which a sophisticated investor willing to take some risks might earn. The differential between these figures and the 2.87 per cent average rate of inflation since 1956 resulted in a figure of from .88 per cent to 1.77 per cent, representing that part of the annual yield which constitutes payment for the use of capital (hereinafter referred to as "real yield").

year, my pension funds invested in bonds and mortgages may pay me 7 per cent rather than 4 per cent. This adjustment of interest rates to strong inflation has been observed in Brazil, Chile, and even the United States after World War II." P. Samuelson, *Economics* 259, n.2 (7th ed. 1967).

²⁸ See note 25, *supra*.

The expert took the 4.14 per cent average earnings from mutual savings bank investments as representative of the investment which could be expected of a prudent, non-sophisticated investor, and rounded up to 1.5 per cent, the 1.27 per cent difference between this 4.14 per cent of return and the 2.87 per cent rate of inflation.

The Court considered the plaintiff's concept of the need to derive an inflation-adjusted discount rate to be basically reasonable, but in view of the plaintiff's relatively sparse evidence in support of a 1.5 per cent discount rate, the Court has sought corroboration for this particular figure. The Court's attention having been directed by the defendant's expert's report²⁹ to a handy source of relevant economic data, the *1974 Economic Report of the President*, the Court undertook to calculate on the basis of judicially noticed data therein the real yields, with inflation factored out, of investments made since 1940 at the rates of interest paid on various types of securities issued by the federal government. These calculations, which are explicated and reproduced in tabular form as an Appendix to this opinion, provide sufficient corroboration—even with due regard for the Court's lack of expertise in this area and the perils of economic forecasting based on past data³⁰—for the Court to credit the plaintiff's evidence that a 1.5 per cent real yield is a fair figure to apply for discounting purposes over a 40-year period.

While real yields on the order of 2 per cent per year may be attained during a period of a low, stable rate of inflation, such as the period examined in Table A-II of the Appendix,

²⁹ "Value of Life Calculation," Defendant's Exhibit F, at 2, nn. 2 & 3.

³⁰ See note 33, *infra*. Of course, since Connecticut law requires the discounting to present value of damages for the destruction of future earning capacity, and since such discounting demands assessment of the future earning power of money, the Court is compelled to engage in economic forecasting despite the inexactitude of the dismal science's soothsaying. It is not open to this Court to decide that the ascertainment of a discount rate has become too speculative to be fair, and that the statutory mandate of awarding "just damages" for wrongful death, Conn. Gen. Stats. § 52-555, would be better served by dispensing with the discounting process altogether. Cf. note 26, *supra*.

upward shifts in the rate of inflation can erode drastically the average real yield of a long-term investment, and an accelerating rate of inflation has often outdistanced the real yields even on short-term securities, such as Treasury bills, which should be especially sensitive to fluctuations in the rate of inflation.³¹ Use of a 1.5 per cent rather than a 2.0 per cent discount rate allows a margin of error to compensate for unexpected increases in the rate of inflation which may depress long-term real yields.³² Moreover, the government securities upon which the investment models of the Appendix are based are the domain of sophisticated investors, since these securities are sold only in large denominations and, in the case of Treasury bills, are payable to bearer and mature rapidly, thus requiring that the investor pay constant attention to funds so committed. Since the government assumes only minimal administrative duties in connection with such sophisticated instruments of debt, these securities generally afford a higher rate of return than other forms of federally guaranteed investments designed for use by the general public. Cf. *Wolak v. United States*, 366 F. Supp. 1106, 1114 (D. Conn. 1973). Thus as an index of the real rate of return which a prudent but non-professional investor can be expected to earn on

³¹ It should be noted that despite the apparent predictability of inflation since the late 1960's, even current interest rates are being outpaced by inflation. Table A-I of the Appendix shows that average yields on three-month Treasury bills in 1973 lagged 1.6 per cent behind inflation. Thus the 8.57 per cent yield on Treasury bills in mid-April 1974, adverted to by the defendant as supportive of a high discount rate to be applied in this case, must be measured against subsequently obtained statistics on inflation, see note 1 of the Appendix, *infra*. The Consumer Price Index in April 1974 was 10.3 per cent higher than in April 1973. In the three months from January to April 1974, the Index rose by 3.2 per cent, which translates to a 12.8 per cent annual rate of inflation, nearly half again higher than the then-current 8.57 per cent per year yield on Treasury bills.

³² The Appendix demonstrates that, at least over the past 34 years, unexpected *decreases* in the rate of inflation have not occurred in the magnitude or with the frequency necessary to offset by themselves, through temporary enhancement of the real yield on investments, the converse effect of unexpected *increases* in the rate of inflation. See especially Table A-IV.

Furthermore, the Appendix did not take into account the effect of personal taxation on the next real yield of investments.

a lump sum of money over a 40-year period, the Appendix is, if anything, overly generous to the defendant.

The Court concludes, on the basis of the evidence adduced at trial, the evidence judicially noticed and collated in the Appendix, and judicial notice of the continuing erratically inflationary behavior of the American economy,³³ that 1.5 per cent per year is an appropriate figure by which to discount an award of damages based on the destruction of future earning capacity when that award has itself been computed without consideration of inflation affecting that amount subsequent to the date of the injury upon which the

³³ See, e.g., "Theory deserts the forecasters," *Business Week*, June 29, 1974, at 50, 52-54:

"The basic technique of forecasting is to observe the past and look for clues to what will happen in the future. But there is nothing in the past comparable to the inflation-wracked, shortage-ridden U.S. economy of today. The forecaster must work without analogies, which is to say, he must work in the dark.

"****

"[G]reat changes have overwhelmed economic theory in recent years: Inflation has become a dominating influence, instead of just an irritating aberration, in practically all the industrialized economies....

"****

"... Since the Great Depression, the government of every major nation has formally acknowledged responsibility for maintaining maximum levels of employment, production, and incomes. In combination with the trend toward regulation and intervention, this has created what is usually called a 'mixed economy,' a system in which performance at any time is determined not only by the market and the interaction of producers and consumers but also by government policy.

"... Even when the economic policymakers are willing to clamp down — which they often are not — the mixed economy has a strong inflationary bias.

"Says Nobel laureate Paul A. Samuelson: 'It is a terrible blemish on the mixed economy and a sad reflection on my generation of economists that we're not the Merlin's that can solve the problem. Inflation is deep in the nature of the welfare state....'

"****

"Whatever the causes, the inflationary bias of today's economy is a problem for theorists and forecasters alike. Economic theory is at its best when it is describing equilibrium positions, in which supply is equal to demand and prices are clearing the market. But, argues [Yale Professor James] Tobin, the behavior of the economy in the past few years has been characteristic of a system in disequilibrium: Markets are not cleared, supply does not equal demand. 'Lots of people are working on the dynamics of markets,' he observes, 'but it's going to be a long time before this gets synthesized into current theoretical structure.'"

award is premised. To expect a prudently invested award to return a real yield of more than 1.5 per cent per year, and accordingly to discount in advance by more than 1.5 per cent per year, an amount found to be fair compensation—in the absence of inflation—for damages suffered, would be to deny to the decedent's estate in a wrongful death action the "just damages" to which (in Connecticut) it is statutorily entitled. Conn. Gen. Stats. § 52-555.

Length of Time Discount Rate to be Applied

Having ascertained the discount rate to be applied in reducing to present worth the year-by-year values placed upon the decedent's lost future earning capacity, it remains to determine the length of time over which these year-by-year values are to be discounted. Two questions are involved. First, whether present value is to be determined as of 1971, the date of death, or 1974, the date of judgment. Second, from what point within each fiscal year of lost future earning capacity the discounting process is to begin.

The first question is intimately related to the subject of prejudgment interest. In the instant case, complete consistency with the use of "1971 dollars" rather than "1974 dollars," see note 34, *infra*, in the lost future earning capacity valuations would calculate the total loss to the decedent for the destruction of future earning capacity in terms of "1971 dollars" discounted to their value at the time of her death, and this total loss would then be subject to prejudgment interest at some rate, such as Connecticut's six per cent per annum legal interest, Conn. Gen. Stats. § 37-1, 37-3a, which would provide compensation both for the loss of use of this money between the date of death and of judgment, and for the decline in value of the dollar during the same period, since of course payment will be tendered not in "1971 dollars" but in "1974 dollars" of considerably less real purchasing power.

Complete consistency is thwarted, however, by the Con-

nnecticut rule that prejudgment interest may not be awarded on unliquidated claims for compensatory damages unless "the damage is of the sort which could reasonably be ascertained by due inquiry and investigation on the date from which interest is awarded." *United Aircraft Corporation v. International Ass'n. of Machinists*, 161 Conn. 79, 107 (1971). Nothing is more conclusively established by the instant memorandum of decision than the difficulty of ascertaining the amount of damages due in this case; accordingly an award of prejudgment interest as such would not be proper under Connecticut law.

The Court of Appeals has addressed itself to just the situation presented herein. In *LeRoy v. Sabena Belgian World Airlines*, 344 F.2d 266, 277 (2d Cir. 1965), the district court judge had discounted damages based on lost future earning capacity to their value as of the date of death. Then, applying New York law which in turn required application of Italian law, the trial judge found that Italian law would not allow an award of prejudgment interest for the period between the date of death and the date of judgment. The Court of Appeals affirmed the finding that prejudgment interest could not be awarded, but required that damages be discounted only to the date of judgment. The Court of Appeals indicated that when the law of the forum forbids prejudgment interest, that prohibition is to be narrowly construed and unless discounting to the date of death is specifically required, de facto prejudgment interest is to be awarded by discounting damages based on future earnings only to the time of judgment.

This case clearly falls within the Court of Appeals' mandate. Connecticut's prohibition on the award of prejudgment interest is not so specific or pervasive as to suggest that discounting damages for the loss of future earning capacity merely to the time of judgment would conflict with Connecticut public policy. Indeed, such a method of discounting is suggested by Connecticut's formulation of the

need for discounting in terms of present payment rather than value at time of death: "the trier must consider . . . the fact that a present cash payment will be made . . ." *Chase v. Fitzgerald, supra*, 132 Conn. at 469. Because of the difference in this case between the discount rate and the appropriate prejudgment interest rate, the Court of Appeals' remedial discounting process will still leave the plaintiff considerably short of the total recovery which would be produced by adding prejudgment interest to damages discounted to 1971, but the plaintiff is nevertheless entitled to the benefit, however moderate, of having damages based on post-judgment future earning capacity reduced only to their value as of the time of judgment.³⁴ The loss of earning capacity between the time of death and the date of

³⁴ If the future earning capacity values listed in Table I were discounted to July 1, 1971, rather than July 1, 1974, they would total \$478,879. If the personal living expense values listed in Table II were discounted to July 1, 1971, rather than to July 1, 1974, they would total \$149,268. Adding in the \$100,000 awarded for the intangible loss of the capacity to enjoy life's activities, the total award under the July 1, 1971, discounting process, exclusive of prejudgment interest, would be \$429,611. This is \$14,445 less than the judgment herein awarded pursuant to the July 1, 1974, discounting method. However, prejudgment interest at six per cent per annum, without compounding, even if figured only on the \$329,611 future earnings portion of the \$429,611 total damages under the 1971 discounting method, would add \$59,380, increasing the total award under the 1971 discounting method, with prejudgment interest, to \$488,941, \$44,885 more than the judgment herein awarded.

It should be noted that an even higher total award than that resulting from the 1971 discounting method plus prejudgment interest would result from valuing the decedent's lost future earning capacity (for years from the date of judgment forward) in terms of "1974 dollars" rather than "1971 dollars." Under this method, the use of fixed salary levels without regard to future inflation and the use of an inflation-adjusted discount rate would continue, but the federal government's General Schedule of 1974 rather than 1971 would be used to value the decedent's year-by-year future earning capacity for all fiscal years from 1975 forward. These values would then be discounted back to their present worth in 1974. Under this method of computation, prejudgment interest, even if allowed, would be applicable only to the three years of earning capacity lost to the decedent between the date of death and the date of judgment, since in all other respects the judgment would already reflect the decline in the real purchasing power of the dollar between 1971 and 1974, and the fact that the decedent's estate will not gain the use of the judgment until 1974. The current General Schedule, which went into effect on October 1, 1973, averages 16 and $\frac{1}{3}$ per cent higher than the General Schedule in effect at the time of Mrs. Feldman's death. See 5 U.S.C.A. § 5332 (Supp. 1974, at 48). Applying this 16 and $\frac{1}{3}$ per cent differential to both future earning capacity values and personal living expenses for

judgment has already accrued. That loss, as of now, can no longer be considered a loss of "future" earnings. Accordingly, damages for lost earning capacity during the years between Mrs. Feldman's death and judgment herein shall be computed at face value without discounting or the addition of prejudgment interest, and damages for lost earning capacity for years after the date of this judgment shall be discounted to their present value as of July 1, 1974.³⁵

The second question concerning the length of time over which the discount rate is to be applied revolves around "the periodic times in the future," *Chase v. Fitzgerald, supra*, 132 Conn. at 470, at which the decedent would have received the value of her future earning capacity had she lived. In order to discount the value attributed to each fiscal year of Mrs. Feldman's lost earning capacity simply for the number of years between the beginning of that fiscal year and July 1, 1974, it would have to be assumed that had she lived she would have received the value of her annual earning capacity in a lump sum every July 1, at the beginning (or end) of each fiscal year. Such an assumption of yearly intervals in the decedent's receipt of the value of her future earning capacity, while avoiding the difficulty of discounting the year-by-year values by fractional numbers of years, would not fairly reflect the "periodic times in the future" by which present value is to be computed. In fact, the decedent would far more likely have received the value

the fiscal years 1975 forward, as discounted to their present values in 1974, would add \$51,862 to the judgment herein, for a total of \$495,918. However, since the evidence presented at trial on salary levels and personal living expenses was oriented primarily toward the calculation of these items in terms of "1971 dollars," and since the computation of damages in terms of "1971 dollars" rather than "1974 dollars" leads to a just result even in the absence of prejudgment interest, the Court will adhere to the plaintiff's suggested methodology of computing damages in terms of "1971 dollars."

³⁵ The year-by-year values of the decedent's lost future earning capacity have been computed on the basis of fiscal years beginning on July 1 of each calendar year. See note 21, *supra*. For the sake of convenience, the present values for each fiscal year's earning capacity will be computed as of July 1, 1974, rather than the exact date of the judgment herein.

of her earning capacity in equal installments throughout each fiscal year, in the form of monthly or semi-monthly paychecks. The amount of the lump sum required on July 1, 1974, to provide (when compounded at 1.5 per cent annually) an amount sufficient to pay out in equal installments throughout any given fiscal year the total value of the decedent's lost earning capacity for that year, can be approximated by discounting the value for that fiscal year's lost earning capacity from a point mid-way through that fiscal year, *i.e.*, January 1. The decedent's estate is thereby credited with retaining the use of the money awarded for each fiscal year's lost earning capacity during one half of the year for which it was awarded, to reflect the reciprocal fact that, since she would not have received a lump sum payment of salary at the beginning of each fiscal year, the decedent herself, had she lived, would have had only one-half year's use, on the average, of the total value of her earning capacity for each fiscal year.³⁶

The total amount of damages suffered by Mrs. Feldman because of the destruction of her future earning capacity, as discounted to present value, is set forth in Table I.³⁷

³⁶ The actual length of time during which one receiving payments of equal amounts at equal intervals has the use of, on the average, the entire amount received is one half of the time between the receipt of the first payment and receipt of the last payment. Thus if a year's salary is received in monthly installments, one receives the use of the entire year's salary for five and one-half months; if paid by the week, one would have the use of the year's salary for twenty-five and one-half weeks. The use of a point six months from the end of each fiscal year for discounting purposes in Table I and Table II, instead of a point five and one-half months from the end of each fiscal year, has a *de minimis* effect on the present value computations, while contributing greatly to the convenience of the Court. Indeed, computation of present value from the middle of each fiscal year instead of from the end of each fiscal year enhances the plaintiff's recovery in Table I by only \$3,978, while increasing the deduction from plaintiff's recovery for personal living expenses, as set forth in Table II, by only \$1,098, for a net difference of only \$2,880.

³⁷ The decedent's retirement is computed in Table I as if her 65th birthday would have occurred on June 30, 2011, rather than May 23, 2011. The expiration of the decedent's 52-year life expectancy is similarly computed in Table II, *infra*, as falling on June 30, 2023. (It is unclear whether the 52-year life expectancy stipulated to by the parties, see note 24, *supra*, was intended to run from the decedent's 25th birthday on May 23, 1971, or from the date of her death on June 7, 1971.)

TABLE I

Computation of Damages for Loss of Earning Capacity

Fiscal year ending June 30,	Value of lost earning capacity		Net after 25% tax	Discounted at 1.5% for (years)	Present value on July 1, 1974
	GS Level	GS Salary			
1972	12-1	\$15,040	\$11,280	-0-	\$11,280
1973	12-2	15,541	11,656	-0-	11,656
1974	12-3	16,042	12,032	-0-	12,032
1975	12-4	16,543	12,407	1/2	12,315
1976	12-5	17,044	12,783	1 1/2	12,500
1977	12-5	17,044	12,783	2 1/2	12,315
1978	12-5	17,044	12,783	3 1/2	12,134
1979	12-5	17,044	12,783	4 1/2	11,954
1980	12-5	17,044	12,783	5 1/2	11,778
1981	12-5	17,044	12,783	6 1/2	11,604
1982	12-5	17,044	12,783	7 1/2	11,432
1983	12-5	17,044	12,783	8 1/2	11,263
1984	12-5	17,044	12,783	9 1/2	11,097
1985	12-5	17,044	12,783	10 1/2	10,933
1986	12-6	17,545	13,159	11 1/2	11,088
1987	12-7	18,046	13,535	12 1/2	11,236
1988	12-8	18,547	13,910	13 1/2	11,377
1989	12-9	19,048	14,286	14 1/2	11,512
1990	12-10	19,549	14,662	15 1/2	11,640
1991	13-5	20,129	15,097	16 1/2	11,808
1992	13-6	20,721	15,541	17 1/2	11,975
1993	13-7	21,313	15,985	18 1/2	12,136
1994	13-8	21,905	16,429	19 1/2	12,289
1995	13-9	22,497	16,873	20 1/2	12,434
1996	13-10	23,089	17,317	21 1/2	12,573
1997	14-5	23,591	17,693	22 1/2	12,656
1998	14-6	24,285	18,214	23 1/2	12,836
1999	14-7	24,979	18,734	24 1/2	13,008
2000	14-8	25,673	19,255	25 1/2	13,172
2001	14-9	26,367	19,775	26 1/2	13,328

Fiscal year ending June 30,	Value of lost earning capacity		Net after 25% tax	Discounted at 1.5% for (years)	Present value on July 1, 1974
	GS Level	GS Salary			
2002	14-10	27,061	20,296	27½	13,477
2003	15-5	27,483	20,612	28½	13,484
2004	15-6	28,291	21,218	29½	13,676
2005	15-7	29,099	21,824	30½	13,858
2006	15-8	29,907	22,430	31½	14,033
2007	15-9	30,715	23,036	32½	14,199
2008	15-10	31,523	23,642	33½	14,357
2009	16-5	31,881	23,911	34½	14,306
2010	16-6	32,819	24,614	35½	14,509
2011	16-7	33,757	25,318	36½	14,703
					\$499,953

V

Damages for Destruction of Capacity to Enjoy Life's Activities

There is more to life than earning a living. The capacity to earn money, although it "may well be the principal element of recovery resulting from [wrongful] death," is but part of the decedent's overall "capacity to carry on life's activities" for the destruction of which the decedent's representative is entitled to compensation. *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 669-670. Evidence of a decedent's "appearance, health, background, [and] education" is properly to be considered relative to whether the decedent would have lived a "pleasurable" as well as a "profitable" life, as where an untimely death has deprived the decedent "of an opportunity to take his place in the community, . . . and to rear a family." *McKirdy v. Cascio*, *supra*, 142 Conn. at 86. "[E]vidence as to the decedent's hobbies and recreations [is] admissible and, to the extent that the proof warrant[s], [s]hould presumably operate

to enhance the amount of the verdict." *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 676. Such evidence contributes to an "over-all picture of the decedent's activities," and has a "bearing on how 'pleasurable' the decedent's future might have been," thus enabling the trier of fact "to make an informed valuation of the total destruction of [the decedent's] capacity to carry on life's activities." *Waldron v. Raccio*, *supra*, Conn. L.J., July 9, 1974, at 8.

The decedent has already been credited with continued earning capacity during the years she expected to spend at home rearing children. But her estate is still due compensation for her loss of the capacity to enjoy the myriad activities life offers outside of working hours. There was evidence from her husband and from her friend Mr. Bourke that the decedent derived much pleasure from sports such as cycling, skiing, and tennis, from entertaining friends as a hostess and from being entertained herself, and from travelling with her spouse. She was happy and well-adjusted, and attractive in appearance. She was in good health, and could expect to live out the 52 years remaining in her expected life span. Cf. note 24, *supra*. In addition to all this, she was by virtue of her education, her family background, and her marriage to a fellow professional in an extremely advantageous social and economic position. Her standard of living was likely to rise considerably over the course of her working life. See pages 71-72, *infra*. Hence, she was especially likely to derive joy and satisfaction from life.

A substantial award for the destruction of the decedent's capacity to enjoy life is clearly justified. However, since the Supreme Court of Connecticut has intimated that damages for the destruction of earning capacity should be the "principal element of recovery" for the wrongful death of one "who earns a relatively large income," *Floyd v. Fruit Industries, Inc.*, *supra*, 144 Conn. at 670; see also *Chase v. Fitzgerald*, *supra*, 132 Conn. at 468-469, the award must be

relatively conservative in view of the substantial award of damages for the destruction of Mrs. Feldman's future earning capacity. With these considerations in mind, and aware that the Court must undertake "to do justice as best it can, although of necessity crudely," *Waldron v. Raccio, supra*, Conn. L.J., July 9, 1974, at 8, quoting *Lane v. United Electric Light & Water Co.*, 90 Conn. 35, 37 (1915), the Court awards \$100,000 for the destruction of the decedent's capacity to enjoy life's activities.

Damages for Conscious Pain and Suffering before Death

Ante-mortem damages flowing from the same tort as caused wrongful death must be recovered, if at all, in the same action as seeks recovery for the death itself. *Floyd v. Fruit Industries, Inc., supra*, 144 Conn. at 669; Conn. Gen. Stats. § 52-599. In an effort at proving such damages, the plaintiff submitted a report on the crash prepared by the National Transportation Safety Bureau, which indicated that an intense fire began immediately upon impact and burned "to the point of near total destruction the upper portion of the fuselage and cabin area of the airplane."³⁸ Only two passengers and the co-pilot survived; two other crew members and 26 passengers perished. The accident was deemed survivable, since "the fuselage structure remained sufficiently intact to preclude the infliction of traumatic injuries to the occupants."³⁹ Over half of the non-surviving passengers were found near the rear door of the plane, which in the absence of the stewardess, who had been injured on impact, could not be opened without the passengers being able to read detailed instructions. All of the passengers killed in the disaster died of asphyxiation or burns or both.

³⁸ National Transportation Safety Board, *Aircraft Accident Report: Allegheny Airlines, Inc., Allison Prop Jet Convair 340/440, N5832, New Haven, Connecticut, June 7, 1971*, (1972), Plaintiff's Exhibit 6, at 1.

³⁹ *Id.*, at 16-17.

The plaintiff also submitted, by agreement with the defendant, excerpts from testimony given at the trial of *Perry v. Allegheny Airlines, Inc., supra*, by a survivor of the aircraft disaster in which the decedent herein lost her life. The defendant agreed to this manner of presenting the testimony. The survivor, Mr. Norman Kelly, anticipated the crash when he saw through the window that the plane was at an unusually low altitude. He cradled his head in his arms immediately before impact. After the crash the interior of the plane was pitch black; the right wing and the right-hand exterior of the plane were on fire. Mr. Kelly opened the emergency door over the right wing, which was located next to his seat on the plane. He was burned by a great rush of flame through the door and hurriedly shut it. He heard a voice call the passengers to the exist at the rear of the plane. Since the back of the plane was smoky and dark, Mr. Kelly decided to try the emergency door opposite his seat, opening over the left wing. The flames outside that door were less intense. One other passenger followed Mr. Kelly out the door, through the fire, and over the wing to safety. Within about a minute of their exit the left wing exploded.

The plaintiff's final submissions of evidence on the decedent's conscious pain and suffering and contemplation of death were the decedent's death certificate and the report of the autopsy performed on the decedent's remains. The death certificate indicated that death was "sudden," and attributed it to "Asphyxia due to inhalation of smoke and Carbon Monoxide; Second and Third Degree Flame Burns of Body."⁴⁰ The autopsy report noted that the body was extensively burned, with charring of the head, thorax, and extremities. No fractures of the skeleton were found, and the internal organs were normal, save for the lungs: these were congested and discolored, and showed the inhalation

⁴⁰ Connecticut State Department of Health, "Certified Copy of Death Record: Nancy Hollander Feldman," Plaintiff's Exhibit 5.

of black particulate matter. Although the skull was not fractured and the brain showed no abnormalities, "a slight amount of what appeared to be clotted blood, resembling bone marrow was present over the right parieto-occipital portion of the brain in the epidural space."⁴¹ The report concluded that "The immediate cause of death was pulmonary edema and congestion, associated with smoke inhalation and extensive charring burns of the entire body."⁴²

The evidence thus presented by the plaintiff, while laying a foundation for a finding that the decedent suffered prior to her death, fails to show the existence of any nexus between the evidence that many of the passengers remained conscious after impact and the crucial question whether the decedent was likewise conscious after impact. No evidence was presented as to the location within the fuselage at which the decedent's body was found. Were she found in the cluster of bodies at the rear of the plane, the inference would be strong that she retained consciousness after the impact, acted to save her life, and had to face the frustration of her efforts at survival in the darkness, smoke, and heat of the burning fuselage. Conversely, were she found in the area of her seat, the inference would be strong that the impact had rendered her unconscious by a blow to her head, causing the clotted blood noted in the autopsy, so that she was not aware of her impending death. Nor was any evidence presented from which the Court could fairly infer that the decedent was aware of the proximity of disaster in advance of the actual impact. Mr. Kelley was alert to the situation only because he was monitoring the plane's descent by looking out the window; the plane's altitude underwent no dramatic change indicative of disaster.

Based on the proof adduced specifically on this point and on the totality of the circumstances of this case, the Court

⁴¹ "Autopsy Upon the Body of Nancy H. Feldman," Plaintiff's Exhibit 8, at 3.

⁴² *Id.*

concludes that it would be too speculative to award damages for Mrs. Feldman's conscious pain and suffering and contemplation of death.

VI

Deduction of Personal Living Expenses

The total losses sustained by reason of the wrongful death of Mrs. Feldman amount to \$599,953; \$499,953 for the destruction of her future earning capacity and \$100,000 for the destruction of her capacity to enjoy life's activities. Connecticut law demands, however, that this amount be reduced by the amount the decedent would have expended on personal living expenses had she lived. "If we bear in mind the underlying survivorship theory of our law, it becomes obvious that if fair compensation is to be made for the loss incident to the total destruction, at death, of the capacity to carry on life's activities, then in the case of a decedent who was subject to the expense of maintaining himself there must be deducted from what would otherwise be fair compensation the reasonable expense of personal living during the probable duration of his lifetime." *Floyd v. Fruit Industries, Inc., supra*, 144 Conn. at 673-674.

Decedent's Obligation of Self-Support

Since Connecticut law provides for the deduction of personal living expenses from damages otherwise recoverable for the destruction of earning capacity through wrongful death only "in the case of a decedent who was subject to the expense of maintaining himself," *Floyd v. Fruit Industries, Inc., supra*, 144 Conn. at 674, a threshold question in the instant case is whether Mrs. Feldman was subject to the expense of maintaining herself. Most jurisdictions impose upon a husband a duty to support his spouse, enforceable by both civil and criminal sanctions. See, e.g., Conn. Gen. Stats. §§ 46-10; 53-304. However, since this duty is generally subject to the implied or expressed limitation

that only "reasonable" support be supplied by a husband, the Court does not feel that this duty exempts an income-earning wife in a dual-career marriage from an obligation to apportion a part of her income for her own support. To hold otherwise would be unnecessarily inconsistent with the trend of the law, both judicially and legislatively prescribed, toward according women equal social rights and obligations absent compelling circumstances urging the contrary. See *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971). Compare *Kahn v. Shevin*, 42 U.S.L.W. 4591 (U.S. April 24, 1974). Accordingly, the Court holds that the decedent herein was subject to the expense of maintaining herself.

Calculations of the Parties

The parties differed considerably in their definition and assessment of personal living expenses. The plaintiff deemed such expenses to be those required for "the necessary food, shelter, clothing and medicine that we both spent to keep ourselves going in occupation."⁴³ Plaintiff estimated that the decedent's share of their personal living expenses in New Haven during the last year of her life amounted to \$90 per month for rent and \$20 per week for food, clothing, and medicine; these figures totalled \$2,120 per year. Plaintiff's future earnings expert rounded this amount to \$2,150. Under cross-examination, however, the plaintiff could ill-account for the \$6,000 of income which his figure for personal living expenses left undisposed of from the approximately \$10,000 of after tax income enjoyed by the couple in 1970. The plaintiff spoke vaguely of travel, entertainment, and unspecified savings and investments as consuming the rest of this income.

The defendant's expert used statistics compiled by the United States Department of Labor to arrive at a much different figure for personal living expenses. The basis

⁴³ R.T. at 80.

for the defendant's calculations was the \$16,345 total budget of a family of four, including two children, which in 1971 enjoyed a "higher level of living" in the metropolitan Washington area. Of this budget, \$12,002 went for "consumption items such as food, housing, transportation, clothing, personal care, medical care, and family consumption," according to the report of the defendant's expert.⁴⁴ The Department of Labor determined that a couple without children would spend 49 per cent of the figure for a family of four; a single person living alone would spend 35 per cent. The defendant's expert used the 35 per cent figure rather than one-half of the 49 per cent figure to derive a personal living expense sum of \$4,200 per year. From this he subtracted \$269 for recreational expenses, a figure derived from statistics showing that national recreational expenditures in 1971 accounted for 6.4 per cent of national personal consumption expenditures. The defendant's expert ended up with a sum of \$3,931 as the decedent's probable net personal living expenses.

Definition of Personal Living Expenses

Both parties misperceived the proper ingredients of personal living expenses. The phrase "refers to those personal expenses which, *under the standard of living followed by a given decedent*, it would have been reasonably necessary for him to incur in order to keep himself in such a condition of health and well-being that he could maintain his *capacity* to enjoy life's activities, including the capacity to earn money." *Floyd v. Fruit Industries, Inc., supra*, 144 Conn. at 675. (Emphasis added.) The plaintiff departs from this standard in seeking to have the decedent's personal living expenses calculated at a flat figure derived from the couple's final year in New Haven, notwithstanding the probability that the decedent's income and standard of living would have risen steadily and substantially during her career in

⁴⁴ Defendant's Exhibit F, *supra* note 29, at 4-5.

Washington. However, the existence of a nexus between personal living expenses and standard of living does not mean, as the defendant would have it, that all expenses except for taxes, gifts, and narrowly defined "recreation" are incident to the maintenance of as high a standard of living as income will permit and hence are personal living expenses. Under the Connecticut rule, personal living expenses are those which cover the cost of maintaining the *capacity* to live well. Personal living expenses as so defined provide the setting for the precious gem of life, and while the cost of the setting may reflect the cost of the gem, it does not include it. Thus the Court concludes that the personal living expenses deductible herein are the expenses, at a level appropriate to the decedent's standard of living, for the basic necessities of life: food, shelter, clothing, health care. These basic necessities are generally satisfied in decreasingly Spartan fashion as a person's available income rises; this circumstance must be taken into consideration. Moreover, the amount expended on basic necessities is often directly related to earning capacity, especially in a personality-oriented professional career where living style may be an attribute of success. Thus in assuming a professional's rising earning capacity, it must also be assumed that expenditures for basic necessities will rise commensurately.

Assessment of Decedent's Personal Living Expenses

The \$2,120 per year which the plaintiff testified to as his estimation of the decedent's personal living expenses in New Haven was revealed under cross-examination as unduly conservative in regard to clothing and to food. Plaintiff's expert took a cautious view of this evidence, increasing it to the rounder number of \$2,150. The Court goes a step further, and adopts the still rounder figure of \$2,200 as a credible estimate of the decedent's ante-mortem level of personal living expenses. The plaintiff admitted, however,

that higher living costs could be expected in Washington, at least as to some items. Moreover, the Court has concluded that the decedent would have secured employment in Washington at a starting salary 50 per cent over that she was receiving in New Haven, and would receive annual increases thereafter averaging slightly over three per cent. See pages 27-29, *supra*. It would seem that at least half of the initial salary differential is reasonably attributable to higher living costs in Washington, and hence the decedent's personal living expenses for her first year in Washington may fairly be set at 25 per cent above her last year in New Haven. Thereafter, percentage increases in personal living expenses approximating similar percentage increases in earning capacity will serve to satisfy the Connecticut requirement for an appropriate deduction from the value of earning capacity to represent the cost of maintaining that capacity. Thus, the decedent's probable personal living expenses are set at \$2,750 for her first year in Washington, that amount to be increased by three per cent for each year thereafter in which she has been credited with an increase in earning capacity.⁴⁵

⁴⁵ The \$2,750 figure for the decedent's personal living costs during her first year in Washington, derived by the Court by increasing by 25 per cent the \$2,200 figure estimated for the decedent's personal living expenses during her last year in New Haven, compares very favorably with the defendant's expert's calculations when one factor in those calculations is adjusted. The defendant's expert based his calculations on the estimated expenditures of a family of four in the Washington area for a "higher" level of living. See page 70, *supra*. To reduce the figure applicable to a family of four to one applicable to decedent alone, a factor of .35 was used. This factor of .35 is prescribed by government statisticians for use in determining the expenditures of a single person living alone. The prescribed factor for determining the expenditures of two persons living together is .49 of the family-of-four figure. Since the decedent would have been living with her husband and have enjoyed consequent economies of scale, the appropriate factor for the defendant's expert to have used was one-half of the .49 factor, or .245. Had the defendant's expert used a .245 factor, but otherwise made the same assumptions, he would have derived a personal living expenses figure for the decedent of \$2,750.06. This figure is obtained by multiplying the \$12,002 base figure by .245, resulting in a product of \$2,940.49. From this must be subtracted a recreational expense adjustment. The defendant's expert used a figure of .064, representing the percentage of national personal consumption spent for recreation. This percentage must be multiplied by the .245 factor, yielding a revised factor of .0167,

Surprisingly, not only the plaintiff but also the defendant treated personal living expenses solely as an item to be deducted from year-by-year valuations of the decedent's lost future earning capacity. Thus both parties made allowance for personal living expenses by deducting them, in the same manner as future income taxes, from the gross value of each year's lost future earning capacity. This method of calculation ignores the fact that what is to be deducted from "what would otherwise be fair compensation" is "the reasonable expense of personal living *during the probable duration of [the decedent's] lifetime.*" *Floyd v. Fruit Industries, Inc., supra*, 144 Conn. at 674 (emphasis added). The decedent had before her at the time of her death a probable life span of 52 more years, of which only 40 were working years. See note 24, *supra*. The Court is required to deduct from the damages heretofore assessed the decedent's personal living expenses during her 12 years of retirement as well as during her working life.

In assessing the decedent's personal living expenses during her working years, the Court has recognized that "the amount expended on basic necessities is often directly related to earning capacity." Page 72, *supra*. Thus it would not be fair to assess the decedent's personal living expenses during retirement at the same maximum level which they would have reached in her last year prior to retirement, when she has been credited with her highest earning capacity. On the other hand, it cannot reasonably be assumed that a person accustomed to an affluent standard of living will upon retirement and the cessation of current income revert to living on the proverbial shoestring. While this is the current lot of many of the nation's aged, the earning capacity with which the decedent has been credited and the favorable social and economic circumstances in which she could be expected to have lived out her life are such that

by which the \$12,002 base figure is again multiplied. This produces a figure of \$190.43, which when subtracted from \$2,940.49 yields a net personal living expenses figure of \$2,750.06.

it may fairly be assumed that the decedent would have made adequate provision for her years in retirement. Thus her personal living expenses during these years must be put at a level high enough to be consistent with a continued high standard of living, while nevertheless reflecting the absence of the necessity to maintain a high earning capacity. The Court accordingly sets the decedent's personal living expenses during retirement at \$5,000 per year, a convenient figure which is approximately one-quarter less than the personal living expenses assessed for the decedent's year of maximum earning capacity.

Discounting of Personal Living Expenses to Present Value

Connecticut law is unclear on whether personal living expenses are to be discounted to present value. The Court believes that logic and justice alike require that since the decedent's estate is to receive only the present value of her lost future earning capacity, there should be charged against that only the present value of her future personal living expenses. The purpose of discounting the future earning capacity values is to insure that the lump sum of damages is no more than is necessary, when the earning power of money is considered, to provide the sums which the decedent was capable of receiving "at periodic times in the future." *Chase v. Fitzgerald, supra*, 132 Conn. at 470. But personal living expenses too are sums to be paid "at periodic times in the future." To deduct from the present value of damages to which the decedent has been found to be entitled the full amount of an expenditure which would not have been incurred by the decedent until a future time, would have the effect of magnifying the proportion of the decedent's future earning capacity which would have been consumed by personal living expenditures.

The parties achieved the proper result of discounting to present value the decedent's personal living expenses by deducting those expenses from each year's value for lost

earning capacity *before* discounting that value to present worth. The same result may be achieved more directly by discounting the yearly figures assessed for personal living expenses, and deducting the sum of these discounted figures from the losses sustained by the decedent, which of course include the sum of the discounted future earning capacity figures. This latter method is in any event necessary to discount the personal living expenses assessed for the years of retirement in which the decedent has been deemed to have no earning capacity, and so it is this method which has been used for all 52 years for which the decedent's personal living expenses have been computed. The total amount of the deduction for Mrs. Feldman's personal living expenses is accordingly set forth in Table II.

T A B L E II
Computation of Deduction for Personal Living Expenses

Fiscal year ending June 30,	Personal liv- ing expenses	Discounted at 1.5% for (years)	Present value on July 1, 1974
1972	\$2750	-0-	\$2750
1973	2833	-0-	2833
1974	2917	-0-	2917
1975	3005	½	2983
1976	3095	1½	3027
1977	3095	2½	2982
1978	3095	3½	2938
1979	3095	4½	2894
1980	3095	5½	2852
1981	3095	6½	2809
1982	3095	7½	2768
1983	3095	8½	2727
1984	3095	9½	2687
1985	3095	10½	2647
1986	3188	11½ ^u	2686
1987	3284	12½	2726
1988	3382	13½	2766
1989	3484	14½	2807

Fiscal year ending June 30,	Personal liv- ing expenses	Discounted at 1.5% for (years)	Present value on July 1, 1974
1990	3588	15½	2849
1991	3696	16½	2891
1992	3807	17½	2934
1993	3921	18½	2977
1994	4038	19½	3020
1995	4160	20½	3066
1996	4284	21½	3110
1997	4413	22½	3157
1998	4545	23½	3203
1999	4682	24½	3251
2000	4822	25½	3299
2001	4967	26½	3348
2002	5116	27½	3397
2003	5269	28½	3447
2004	5427	29½	3498
2005	5590	30½	3550
2006	5758	31½	3602
2007	5931	32½	3656
2008	6109	33½	3710
2009	6292	34½	3764
2010	6481	35½	3820
2011	6675	36½	3876
2012	5000	37½	2861
2013	5000	38½	2818
2014	5000	39½	2777
2015	5000	40½	2736
2016	5000	41½	2695
2017	5000	42½	2656
2018	5000	43½	2616
2019	5000	44½	2578
2020	5000	45½	2540
2021	5000	46½	2502
2022	5000	47½	2465
2023	5000	48½	2429
			\$155,897

Award of Net Damages

The net amount of the damages to which the plaintiff is entitled is thus \$499,953 for the destruction of future earning capacity (Table I, *supra*), plus \$100,000 for the destruction of the capacity to enjoy life's activities, less \$155,897 for the personal living expenses which the decedent would have incurred (Table II, *supra*), which equals \$444,056.

In addition to "just damages," the Connecticut wrongful death statute provides for the recovery of funeral expenses. Conn. Gen. Stats. § 52-555. Although funeral expenses were claimed in the complaint, no evidence of their amount was adduced at trial. Accordingly, no funeral expenses are awarded.

Dismissal of Plaintiff's Personal Cause of Action

Besides suing as the administrator of the estate of the decedent, the plaintiff also purports to sue on his own behalf for loss of consortium and companionship and other unspecified damages. No such cause of action exists under Connecticut law, which makes a wrongful death action on behalf of the decedent the sole vehicle for the recovery—at least by intestate successors of the decedent—of post-mortem damages resulting from the death of the decedent. *Foran v. Carangelo*, 153 Conn. 356, 359-362 (1966); *Chase v. Fitzgerald*, *supra*, 132 Conn. at 467. It is accordingly ORDERED that the plaintiff's suit on his own behalf be dismissed with prejudice.

The Court having found \$444,056 to be just damages for the wrongful death of Nancy Hollander Feldman, it is ORDERED that judgment enter in that amount against the defendant, on behalf of the plaintiff as the administrator of the estate of the decedent.

SO ORDERED.

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Dated at Hartford, Connecticut, this 1st day of August,
1974.

M. Joseph Blumenfeld

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M. JOSEPH BLUMENFELD
United States District Judge

Appendix

The deflator used throughout the Appendix is the Consumer Price Index (CPI). This was the deflator used by the parties' experts in their respective comments on inflation. Moreover, as opposed to such other deflators as the Wholesale Price Index and the GNP Deflator, the CPI, which is based on retail prices for goods and services purchased by urban wage earners and clerical workers, seemed most relevant to the effect of inflation under study herein—the effect on the purchasing power of an individual urban professional. The Court recognizes that the CPI is currently under revision in response to criticism of its accuracy. See generally, "Serious flaws in the popular price indexes," *Business Week*, April 27, 1974, at 86-91. But the fact remains that the CPI has been deemed sufficiently reliable by officials of government, labor, and management to be tied directly to the incomes of 50 million Social Security and food stamp recipients, government pensioners, and workers. See "The deceptive lure of indexation," *Business Week*, May 25, 1974, at 147. Compared to the billions of dollars thus distributed through escalation clauses tied to the CPI, the sums to be discounted herein are paltry indeed, and in the absence of any more accurate deflator suitable for the task, the Court feels it is reasonable to use the CPI to determine an inflation-adjusted discount rate. Of course, improvements in the CPI effected subsequently to this case must be considered—along with the Court's disavowal of any claim to economic expertise—in assessing the continuing validity of the calculations herein and their applicability to circumstances other than those before this Court in this case.

Data on CPI levels were obtained from the 1974 *Economic Report of the President* (1974 ERP), at 300, Table C-44. In order to conform to the models' assumptions that investments were made on the first day of each year, the

CPI figures in all the tables of the Appendix were adjusted to reflect the approximate level on January 1 of each year, instead of the figure listed in the 1974 ERP—the average level for the entire year. This adjustment was performed by taking the average of the CPI's annual figures for two successive years. Thus, where Table A-I shows the CPI on January 1, 1962, to be 90.1, this represents the two-year average of the 1961 annual average CPI figure of 89.6, and the 1962 annual average CPI figure of 90.6. The January 1, 1974, CPI figure of 139.0 was derived by extrapolation from the December 1973 figure of 138.5 provided by the ERP.¹

Data on interest rates were obtained from the 1974 ERP, at 317, Table C-58, which gives, *inter alia*, annual average yields on three-month Treasury bills for every year from 1929 through 1973 (Tables A-I and A-II), on three-to-five-year notes and bonds for every year from 1939 through 1973 (Table A-III), and on ten-to-fifteen-year taxable bonds for every year from 1942 through 1973 (Table A-IV).² Since year-to-year changes in average annual government obligation yields have been considerably more irregular than the general upward curve of the CPI, no effort was made to adjust the figures for annual average yields to produce figures applicable specifically to the first day of each year.

¹ Since the tables of the Appendix were compiled, 1974 monthly CPI averages were obtained by the Court in a telephone interview with Mr. M. P. Jackman, Chief Economist, Office of Consumer Prices, Bureau of Labor Statistics, United States Department of Labor. These figures are as follows:

January 1974	139.7
February 1974	141.5
March 1974	143.1
April 1974	144.2
May 1974	145.6

The average of the December 1973 and January 1974 monthly CPI averages yields the more accurate figure of 139.1 for the CPI as of January 1, 1974.

² The yields on long-term taxable bonds were based on fifteen-year bonds through March 1952, on twelve-year bonds from April 1952 through March 1953, and on ten-year bonds thereafter. 1974 ERP, at 318, Table C-58, n. 4.

Table A-I computes the effective annual yield, after inflation, or "real yield," of one (1) unit invested on the first day of every year from 1940 through 1973, with interest paid at the annual average rate for each year of three-month Treasury bills, and with the entire principle and interest reinvested in the same fashion for each succeeding year through 1973.³

An illustrative reading of the first line of Table A-I, starting with the left-hand column, reveals the following: Had \$1,000 been invested in accordance with the model's assumptions on January 1, 1940, it would have been worth \$2,344.06 on January 1, 1974, for a net yield of \$1,344.06, or 134 per cent, which when divided by the 34-year term of the investment is a real yield of 3.95 per cent per year. But on January 1, 1974, the CPI was 233 per cent above its level on January 1, 1940, having increased an average of 6.84 per cent per year. The hypothetical investor thus lost an average of 2.9 per cent per year in the purchasing power of his invested money. While the investor had \$2,334.06 on January 1, 1974, instead of the \$1,000 he had on January 1, 1940, he needed \$3,330 on January 1, 1974, to buy what his \$1,000 could have purchased on January 1, 1940.

Table A-II was compiled on the basis of the same data and methodology as was Table A-I, but covers only the

³ It should be noted that Tables A-I and A-II assume that the investment made on the first day of each year was compounded *annually* thereafter. A continually reinvested investment in three-month Treasury bills would actually be compounded *quarterly*, i.e., the four times a year when each set of three-month bills would be redeemed and its principle and interest reinvested in another set of three-month bills. The point of the model was not to replicate exactly the yield on continually reinvested three-month Treasury bills, which because of their large denominations are hardly a practicable means of reinvesting the interest on anything but a huge investment, but rather to examine the yield on a hypothetical investment instrument which offered annual compounding at the rate of return contemporaneously offered on three-month Treasury bills, which rate of return was the sort of "risk-free" rate of return which the parties to this case agreed was the standard to be used in setting a discount rate.

period of relatively low and stable inflation from 1952 through 1966.

Table A-III computes the real yield of one (1) unit invested for a term of ten to fifteen years on the first day of every year from 1942 through 1964, with interest paid and compounded annually at the annual average rate of interest paid on long-term (ten to fifteen years) taxable government bonds purchased in the year in which the investment was assumed to have been made.⁴

Table A-IV computes the real yield after inflation of one (1) unit invested for a term of three years on the first day of every year from 1940 through 1971, with interest paid and compounded annually at the annual average rate of interest paid on short-term (three to five years) taxable government notes and bonds purchased in the year in which the investment was assumed to have been made.⁵

Tables A-III and A-IV differ from Tables A-I and A-II in that the investments within each model were assumed to have been held for approximately the same length of time, as determined by the term of the government securities upon the yield of which the model was based. Thus all investments in Table A-III were assumed to have been held for between ten and fifteen years, and all investments in Table A-IV were assumed to have been held for three years. This allows direct comparison between the real yields of

⁴ As with the Treasury bill model, the point of the long-term bond model (Table A-III) and the short-term note model (Table A-IV) was not to replicate exactly actual investments but rather to examine the real yields on hypothetical investments offering the yields obtainable on sophisticated forms of government debt and, in the case of notes and bonds, subject to the constraint of having that yield fixed for the term of the bond. Annual compounding was made a feature of the notes and bonds models in order to avoid understating their effective return. Marginally higher returns yet might have been achieved by compounding each year's interest payment at some rate of interest prevailing at the time of the compounding, rather than at the rate of interest at which the bond was sold. But this would have introduced into the model a level of complexity with which the Court was not prepared to cope absent a more compelling reason therefor.

⁵ See note 4 of this Appendix, *supra*.

similar investments held for the same length of time during periods of differing rates of inflation.

TABLE A-I
Treasury Bill Model 1940-1974

Value on Jan. 1, 1974 of \$1 invested on Jan. 1,	Effective annual interest	CPI on date of investment (Jan. 1, 1974 = 139.0)	% Change in CPI	Average annual % change in CPI	Effective annual interest less average annual % change in CPI
1940 - 2.34406	3.95	41.8	233	6.84	-2.9
1941 - 2.34373	4.07	43.1	223	6.74	-2.7
1942 - 2.34132	4.19	46.5	199	6.21	-2.0
1943 - 2.33371	4.30	50.4	176	5.67	-1.4
1944 - 2.32504	4.42	52.3	166	5.53	-1.1
1945 - 2.31635	4.54	53.3	161	5.54	-1.0
1946 - 2.30770	4.67	56.2	147	5.26	-.6
1947 - 2.29908	4.81	62.7	122	4.51	.3
1948 - 2.28550	4.94	69.5	100	3.85	1.1
1949 - 2.26198	5.05	71.7	93.9	3.75	1.3
1950 - 2.23732	5.16	71.8	93.6	3.90	1.3
1951 - 2.21040	5.26	75.0	85.3	3.71	1.6
1952 - 2.17662	5.35	78.7	76.6	3.48	1.9
1953 - 2.13885	5.42	79.8	74.2	3.53	1.9
1954 - 2.09833	5.49	80.3	73.1	3.66	1.8
1955 - 2.07852	5.68	80.3	73.1	3.85	1.8
1956 - 2.04271	5.79	80.8	72.0	4.00	1.8
1957 - 1.98982	5.82	82.4	68.7	4.04	1.8
1958 - 1.92687	5.79	85.5	62.6	3.91	1.9
1959 - 1.89208	5.95	87.0	59.8	3.98	2.0
1960 - 1.82977	5.93	88.0	58.0	4.14	1.8
1961 - 1.77772	5.98	89.2	55.8	4.29	1.7
1962 - 1.73643	6.14	90.1	54.3	4.52	1.6
1963 - 1.68949	6.27	91.2	52.4	4.76	1.5
1964 - 1.63779	6.38	92.3	50.6	5.06	1.3
1965 - 1.58166	6.46	93.7	48.3	5.37	1.1
1966 - 1.52150	6.52	95.9	44.9	5.62	.9
1967 - 1.45069	6.44	98.6	41.0	5.85	.6
1968 - 1.39060	6.51	102.1	36.1	6.02	.5
1969 - 1.32012	6.40	107.0	29.9	5.98	.4
1970 - 1.23749	5.94	113.1	22.9	5.73	.2
1971 - 1.16242	5.41	118.5	17.3	5.77	-.4
1972 - 1.11399	5.70	123.3	12.7	6.37	-.7
1973 - 1.07410	7.41	127.5	9.02	9.02	-1.6

Selected averages

1969 - 1973:	— .4
1964 - 1973:	.2
1959 - 1973:	.7
1954 - 1973:	1.0
1949 - 1973:	1.1
1944 - 1973:	.9
1940 - 1973:	.5

TABLE A-II
Treasury Bill Model 1952-1967

Value on Jan. 1, 1967 of \$1 invested on Jan. 1.....	Effective annual interest	CPI on date of investment (Jan. 1, 1967 = 98.6)	% Change in CPI	Average annual % change in CPI	Effective annual interest less average annual % change in CPI
1952 - 1.50040	3.34	78.7	25.3	1.68	1.7
1953 - 1.47437	3.39	79.8	23.6	1.68	1.7
1954 - 1.44644	3.43	80.3	22.8	1.75	1.7
1955 - 1.43278	3.61	80.3	22.8	1.90	1.7
1956 - 1.40810	3.71	80.8	22.0	2.00	1.7
1957 - 1.37164	3.72	82.4	18.9	1.89	1.8
1958 - 1.32825	3.65	85.5	15.3	1.70	2.0
1959 - 1.30426	3.80	87.0	13.3	1.67	2.1
1960 - 1.26131	3.73	88.0	12.0	1.72	2.0
1961 - 1.22543	3.76	89.2	10.5	1.76	2.0
1962 - 1.19697	3.94	90.1	9.43	1.89	2.1
1963 - 1.16461	4.12	91.2	8.11	2.03	2.1
1964 - 1.12898	4.30	92.3	6.83	2.28	2.0
1965 - 1.09028	4.51	93.7	5.23	2.61	1.9
1966 - 1.04881	4.88	95.9	2.82	2.82	2.1

Selected averages

1952 - 1966:	1.9
1957 - 1966:	2.0
1962 - 1966:	2.0

TABLE A-III
10-15 Year Federal Bond Model

Bond purchased 1st day of . . .	CPI at maturity	CPI at issue	% change in CPI	Term of bond	Average annual % change in CPI	Annual yield of bond in % of principal	Total yield of bond, with interest compounded at original rate	Effective annual interest	Effective annual interest less average annual % change in CPI
1942-57	82.4	46.5	77.2	15	5.15	2.46	440	2.93	-2.2
1943-58	85.5	50.4	69.6	15	4.64	2.47	442	2.95	-1.7
1944-59	87.0	52.3	66.3	15	4.42	2.48	444	2.96	-1.5
1945-60	88.0	53.3	62.7	15	4.18	2.37	421	2.81	-1.4
1946-61	89.2	56.2	58.7	15	3.91	2.19	384	2.56	-1.4
1947-62	90.1	62.7	43.7	15	2.91	2.25	396	2.64	-1.3
1948-63	91.2	69.5	31.2	15	2.08	2.44	440	2.93	.9
1949-64	92.3	71.7	28.7	15	1.91	2.31	4^8	2.72	.8
1950-65	93.7	71.8	30.5	15	2.03	2.32	1	2.74	.7
1951-66	95.9	75.0	27.9	15	1.86	2.57	463	3.09	1.2
1952-64	92.3	78.7	17.2	12	1.44	2.68	374	3.12	1.7
1953-63	91.2	79.8	14.3	10	1.43	2.94	336	3.36	1.9
1954-64	92.3	80.3	14.9	10	1.49	2.55	287	2.87	1.4
1955-65	93.7	80.3	16.7	10	1.67	2.84	323	3.23	1.6
1956-66	95.9	80.8	18.7	10	1.87	3.08	354	3.54	1.7
1957-67	98.6	82.4	19.6	10	1.96	3.47	407	4.07	2.1
1958-68	102.1	85.5	19.4	10	1.94	3.43	401	4.01	2.1
1959-69	107.0	87.0	23.0	10	2.30	4.07	491	4.91	2.6
1960-70	113.1	88.0	28.5	10	2.85	4.01	482	4.82	2.0
1961-71	118.5	89.2	32.8	10	3.28	3.90	466	4.66	1.4
1962-72	123.3	90.1	36.8	10	3.68	3.95	474	4.74	1.1
1963-73	127.5	91.2	39.8	10	3.98	4.00	480	4.80	.8
1964-74	139.0	92.3	59.6	10	5.06	4.15	502	5.02	.0

Selected averages

1960-1964:	1.0
1955-1964:	1.5
1950-1964:	1.5
1945-1964:	1.0
1942-1964:	0.7
1952-1956:	1.6

TABLE A-IV
3-5 Year Federal Note Model

	CPI at maturity	CPI at issue	Term of note	Annual yield of note in %	% change in CPI	Average annual interest	Total yield of note,	at original rate	with interest compounded	Effective annual interest	less average annual interest	% change in CPI
1940-43	50.4	41.8	20.6	3	.86	.50	.0151	.50	-.6.4	-.6.4	-.6.4	
1941-44	52.3	43.1	21.3	3	7.12	.73	.0221	.74	-.3.4	-.3.4	-.3.4	
1942-45	53.3	46.5	14.6	3	4.87	1.46	.0444	1.48	-.2.5	-.2.5	-.2.5	
1943-46	56.2	50.4	11.5	3	3.84	1.34	.0407	1.36	-.5.3	-.5.3	-.5.3	
1944-47	62.7	52.3	19.9	3	6.63	1.33	.0406	1.35	-.8.9	-.8.9	-.8.9	
1945-48	69.5	53.3	30.4	3	10.1	1.18	.0358	1.19	-.8.0	-.8.0	-.8.0	
1946-49	71.7	55.2	27.6	3	9.19	1.16	.0352	1.17	-.3.5	-.3.5	-.3.5	
1947-50	71.8	62.7	14.5	3	4.84	1.32	.0401	1.34	1.65	1.65	1.65	
1948-51	75.0	69.5	7.91	3	2.63	1.62	.0494	1.45	1.45	1.45	1.45	
1949-52	78.7	71.7	9.76	3	3.25	1.43	.0435	1.52	1.52	1.52	1.52	
1950-53	79.8	71.8	11.1	3	3.71	1.50	.0457	1.52	2.2	2.2	2.2	
1951-54	80.3	75.0	7.07	3	2.36	1.93	.0590	1.97	-.4	-.4	-.4	
1952-55	80.3	78.7	2.03	3	0.678	2.13	.0653	2.18	1.5	1.5	1.5	
1953-56	80.8	79.8	1.25	3	0.418	2.56	.0788	2.63	2.2	2.2	2.2	

1954-57	82.4	2.62	3	1.82	.0556
1955-58	85.5	80.3	6.48	2.16	.4
1956-59	87.0	80.8	7.67	2.56	.7
1957-60	88.0	82.4	6.80	2.27	1.5
1958-61	89.2	85.5	4.33	1.44	2.56
1959-62	90.1	87.0	3.56	1.19	.0966
1960-63	91.2	88.0	3.64	1.21	3.22
1961-64	92.3	89.2	3.01	1.00	3.75
1962-65	93.7	90.1	4.00	1.33	.0895
1963-66	95.9	91.2	5.15	1.72	2.98
1964-67	98.6	92.3	6.83	2.28	1.36
1965-68	102.1	93.7	8.96	2.99	4.52
1966-69	107.0	95.9	11.6	3.86	1.25
1967-70	113.1	98.6	14.7	4.90	4.15
1968-71	118.5	102.1	16.1	5.35	1.15
1969-72	123.3	107.0	15.2	5.08	2.9
1970-73	127.5	113.1	12.7	4.24	1.15
1971-74	139.0	118.5	17.3	5.77	2.7
					2.7

Selected averages:

1967 - 1971:	1.8
1962 - 1971:	1.6
1967 - 1971:	1.8
1952 - 1971:	1.7
1947 - 1971:	1.0
1942 - 1971:	.1
1940 - 1971:	-.5
1952 - 1966:	1.8
1952 - 1961:	1.8

TRANSCRIPT OF EVIDENCE

[12] (Plaintiff's Exhibits 1, 2, 3, 4, 5, 7, 8, 10, 11, 12 and 14 for identification: Received in evidence.)

THE COURT: Are the other numbers retired or are we saving them for —

MR. DOUGLAS: The other numbers are still there, but some of them will have to be identified by witnesses.

THE COURT: All right.

MR. DOUGLAS: Your Honor, I would like to just read the Plaintiff's Exhibit 1, which is the first stipulation entered into by the parties.

"1. Defendant Allegheny Airlines, Inc. is legally responsible for the death of plaintiff's decedent, Nancy Hollander Feldman, and is therefore liable to plaintiff in an amount to be determined by the Court.

"2. Plaintiff Reid Laurence Feldman, both on his own behalf and in his capacity as representative of the Estate of Nancy Hollander Feldman, in consideration of the above stipulation of responsibility and liability by defendant hereby waives all claims and rights either he personally or the the Estate of Nancy Hollander Feldman may have had to punitive or exemplary damages."

[13] With respect to stipulation No. 2, the key matter so far as facts are concerned, which is Plaintiff's Exhibit 2, are that:

"1. Nancy Hollander Feldman was twenty-five years of age at the time of her death;

"2. Nancy Hollander Feldman was in good health immediately preceding the accident which caused her death;

"3. A white woman aged twenty-five years has a life expectancy of fifty-two additional years."

Your Honor, at this time I would like to move the intro-

duction of Plaintiff's Exhibit 6. The defendant has conceded authenticity as to this document, which is an excerpt from the National Transportation Safety Board report, but has reserved the right to oppose its admission.

THE COURT: Do I have the document?

MR. DOUGLAS: Yes, you do. It is Plaintiff's Exhibit 6, your Honor.

THE COURT: All right.

MR. DOUGLAS: It's excerpts from that report.

THE COURT: What is the nature of the objection?

MR. MOLLER: The nature of the objection, your Honor, is it is immaterial to the issue of damages and, secondly, [14] that as a report of the NTSB it is not admissible in evidence in a civil action.

THE COURT: What is your claim as to its relevancy?

MR. DOUGLAS: Its relevance is that it shows the nature of the accident, bearing on pain and suffering, showing that the plane did not explode on contact, that there was fire after it landed and that the fire took some time. It bears on the length of time during which Nancy Feldman endured pain and suffering.

MR. MOLLER: I think more competent evidence of that is Mr. Kelly's testimony, which is already agreed to go before your Honor.

This is a report obviously of an investigation by the NTSB sometime afterwards and I claim that there are many matters in it that really have no relevancy.

THE COURT: Overruled. May be a full exhibit.

(Plaintiff's Exhibit 6 for identification: Received in evidence.)

MR. MOLLER: Out of habit, your Honor, I take an exception.

THE COURT: And in the hope of breaking it, I remind you that in this court it isn't necessary. You get them automatically.

[15] MR. DOUGLAS: Your Honor, I would like to read three pages from the testimony of Norman Kelly. We have reproduced his testimony as Plaintiff's Exhibit 7.

THE COURT: Who is Norman Kelly?

MR. DOUGLAS: Pardon me?

THE COURT: Who is he?

MR. DOUGLAS: Norman Kelly was a survivor of the crash. He testified in the Perry case. The parties have agreed that his testimony can come in, in lieu of having to call him to testify at another time.

THE COURT: All right.

MR. DOUGLAS: And the testimony has been received in evidence.

I would invite your Honor's attention to Page 172 of Exhibit 7, which I believe is the third page, and I would like to read starting at Line 24 on Page 172 of Mr. Kelly's testimony in the Perry case.

"We come out of a cloud-like cover and you could see — I could see straight down because I was looking out of the right window and I could see water. We continued to descend until we got to a point where it seemed unbelievably [16] low to me. And I thought we were going to do one of two things: Either come off of the water onto a runway or crash.

"Well, I took a position of pushing my head into the seat in front of me, pushing my hands onto the seat that I was sitting in. I thought we were going to crash; my opinion. So I know more than done this and we did crash.

"It sounded as though the right prop had hit first, but I

could be mistaken. And the plane vibrated somewhat, but it seemed to me as though we were still on a descent and we hit a couple of items and finally ground to a stop.

"All the lights in the plane were out. It was pitch black. Where I was sitting, when I picked my head up and looked out, there was flames all over on the right-hand side on the outside of the plane. The right wing was ablaze and the ground was in flames.

"I proceeded to take off my seat belt, with some difficulty. It might have only been a couple of seconds or so, but it seemed like hours. I finally got it off, and turned around, kneeled on the seat that I was sitting in, opened the emergency door that was in the seat, or on the side of the seat [17] right behind where I was sitting. When I opened that door, the flames shot in from the right wing four or five feet or so. It got the right-hand side of my face, arms, clothes and started the upholstery and the overhead on fire.

"I partially closed that door back up again, turned around on the seat that I was sitting in and stood up. At that time, someone hollered from the back of the aircraft, in order to get out to go to the back.

"I looked towards the back. It was smoky and dark. I looked towards the front. It was also dark.

"At that time I thought that was the end. I figured the only way I could possibly get out, if I was to get out at all, was the opposite door that I had just tried to get out of.

"So I proceeded across the aisle. When I got to the seat where the left-hand emergency door was, that door was already opened. I don't know how or why, but I hadn't seen it up to that time.

"I proceeded to the door, looking out. The left wing was imbedded in a cottage. I know now it was a cottage; I didn't know then whether it was a house, a cottage, or a bathhouse, or anything of that nature.

[18] "The left wing seemed to be partially ripped away from the fuselage of the plane. That too was in flames.

"The flames were up about the height of the door, where I was, and forward of that the flames were shooting a little higher.

"The wing had an oil or jet fuel slick on it.

"I stepped out onto the left wing, and because it was slippery, and I didn't want to fall backwards, I held onto the fuselage. That was quite hot at the time, and my hands, the meat of my hands would stay right on the plane.

"I went forward part of the wing, jumped off, and ran through the fire, and dove into a brook.

"I proceeded up the brook somewhat, thirty or forty feet or so.

"I would say from the time that I left the wing, and I turned around and looked at the left wing, probably about a minute had passed, and the left wing blew up.

"From then on I met Janet McKay in a swamp.

Question: She was another passenger?

Answer: She was another passenger that followed me out of the aircraft.

[19] **Question:** How long was it from the time that the crash occurred, the impact occurred, until the explosion, or the bursting, what was the bursting into flame of the wing?

Answer: Well, the right wing apparently was on fire already. When the final explosion of the left wing — I would say it is about a minute from the time I left the wing. From the time of the crash to the time I got out I would say it is about a minute, flat.

"It seemed like hours, but a minute is quite a lengthy time, if you ever look at your watch."

MR. DOUGLAS: That went through the middle of Page 176.

Your Honor, I would like to read briefly from Exhibit 5, which is the Death Certificate of Nancy Hollander Feldman, which has been received in evidence.

Part one, as you will notice, states:

Asphyxia is the cause of death — excuse me. I want to quote it accurately. Let me start again.

"Death was caused by:", and then written in are the following:

"Asphyxia due to inhalation of smoke and carbon monoxide; second and third degree flame burns of body".

[20] And on the right-hand column it says, "Sudden" opposite those two descriptions.

Now, your Honor, I would like to read briefly from Exhibit 8, which is the Autopsy. And this has been received in evidence.

Turning to the bottom part of the first page, I ask the Court's indulgence while I read this.

This is an autopsy upon the body of Naney H. Feldman, described as Body No. 7, State Police 3409. The bottom of the first page:

"EXTERNAL EXAMINATION OF THE BODY: The body was that of a young female, weighing 100 pounds, and measuring approximately 60 inches in length. The skin and subcutaneous tissue was extensively burned.

"There is full thickness loss of the skin over the face, both arms, right lateral chest, left medial thigh, beneath both knees, and over the superior aspect of the back. The fat of the right breast protrudes through the anterior charred skin. Both hands are extensively charred, as are

the tibiae. The dorsal aspects of both feet are charred, exposing bone. The bones of the thorax are also exposed. The external genitalia are those of an adult female and show no significant burns.

[21] "Examination of head reveals the scalp to be absent, and the calvarium to be charred. The skin over the nose is absent. The lips are charred and contracted. The neck is symmetrical and the strap muscles are exposed."

Turning to the next, and skipping the next paragraph:

"HEART: Weight: 170 grams. The heart was essentially unremarkable on appearance. No injuries were noted. The valves were intact. The coronary arteries were normal in distribution and origin. No arteriosclerotic changes were noted. No abnormalities were noted in the myocardium.

"LUNGS: Weight: Right: 580 grams. Left: 380 grams. The pleural surfaces were smooth, and glistening bilaterally. The texture of the lungs was firm, due to marked edema and congestion. The lungs had an intense, purple color. The tracheal-bronchial tree was unobstructed. The mucosa of the tracheal-bronchial tree, however, was covered with black particulate matter."

Next page. "ABDOMEN: No excess fluid was noted in the peritoneal cavity. The major organs were all in their normal anatomical position. The appendix was present and [22] retrocecal. Clear urine was present in the bladder.

"SKELETON: No fractures of the skull, thorax or pelvis were noted. A slight thoraco-lumbar scoliosis was present.

"SKULL AND CONTENTS: No external abnormalities were noted over the surface of the skull. The skull was opened without difficulty and a slight amount of what appeared to be clotted blood, resembling bone marrow was present over the right parieto-occipital portion of the brain in the epidural space. No subarachnoid or subdural blood was present. The blood vessels at the base of the brain

were free of arteriosclerosis. Both cerebral hemispheres had a firm consistency and appeared coagulated. No external abnormalities were noted and no abnormalities were seen on cut section. After removal of the brain from the skull, no fractures were noted over the vault of the calvarium or the base of the skull.

"CONCLUSION: The immediate cause of death was pulmonary edema and congestion, associated with smoke inhalation and extensive charring burns of the entire body."

And Dr. Solitare, M.D., Pathologist, signed that on the next page.

[23] I call Reid Feldman.

REID FELDMAN, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Please state your full name for the Court, and your address.

THE WITNESS: Reid L. Feldman, 4948 Sentinel Drive, Bethesda, Maryland.

DIRECT EXAMINATION

BY MR. DOUGLAS:

Q Mr. Feldman, are you the plaintiff in this case?

A Well, as representative of the estate I am, that's right.

Q And are you the Administrator of Nancy Feldman's estate?

A Yes, I am.

Q By whom are you employed?

A I'm employed by the U.S. Senate as a Legislative Assistant to Senator Edmund Muskie.

Q When did you and Nancy Hollander get married?

A We got married in June of 1968.

Q And on June 6th, 1971 where were the two of you?

A We were in Bethesda at her parents' home. We had just moved down there from New Haven.

[24] Q What were you and your wife doing on that day?

A Well, we were preparing for the next few weeks, when she was going to look for a job. I was going to look for a job and prepare for the Bar and we were going to look for a place to live.

Q In what area?

A We were planning to look for work?

Q Yes.

A Well, she was planning to look for work in her field, legislative analysis; and I was planning to work as an attorney.

Q Geographically, where was this?

A In the Washington area.

Q On the next day, June 7th, 1971, did she go to the Washington Airport?

A Yes, she did.

Q Which airport was that?

A The Washington National Airport.

Q And where was she flying to?

A She was flying to New Haven.

Q Did you drive her to the airport that day?

A Yes, I did.

Q Did you leave her at the outside, or did you walk her to the gate?

A No, I walked her to the gate.

[25] Q Do you know what airline she was going on?

A Yes, I do.

Q What was that?

A Allegheny.

Q And do you know where that flight was going?

A Yes. It was going to New Haven.

Q Did you see her board the plane?

A Yes, I did.

Q When was the last time you saw her alive?

A When she boarded that plane.

Q And how did you hear of the crash and your wife's death?

A Well, later that morning I was driving in our car and heard of the crash over the radio.

Q Why was she going up to New Haven?

A Well, she was going back up because her employer had asked her to go up, and she felt a responsibility to work the last few days of — I believe the Connecticut General Session was finishing up its work.

Q Who was her employer?

A Cogen, Holt & Associates.

Q And where were they located?

A In New Haven.

Q And when had you moved to Washington?

A Well, we had moved our belongings just that weekend from New Haven to Washington; June 4th, 5th. I think [26] the 5th.

Q And how old was Nancy at the time of her death?

A She was twenty-five.

Q Now, when did you first meet her?

A We first met in elementary school.

Q Where?

A That was at Parkwood Elementary School in Kensington, Maryland.

Q Is that near Washington?

A Well, Kensington is adjoining to Bethesda. Both

Kensington and Bethesda are both suburbs of Washington, D.C.

Q What junior high schools did the two of you attend?

A We both attended Kensington Junior High School together.

Q Then where did you go to high school?

A Again we went together, to Walter Johnson High School in Bethesda.

Q Where did Nancy go to college?

A She went to the University of Pennsylvania in Philadelphia.

Q And where did you go to college?

A I went to Columbia College, Columbia University, in New York City.

Q When did you graduate from college?

[27] A In 1968.

Q And when did Nancy graduate?

A Also in 1968. Both in the spring.

Q I want to show you a book of Plaintiff's Exhibits and direct your attention to Plaintiff's Exhibit 10, which has been received in evidence. What is this document?

A This is a transcript of my wife's college record.

Q Did she hold down any class positions while she was in college?

A Yes. She was the — I believe the Vice-President of her class in her first year, and she was involved in student government, a delegate to the student government.

Q Did she have a scholarship during college?

A Yes, she did. It was a scholarship awarded by the United States Justice Department.

Q Now, did you see each other seriously during college?

A Yes, we did, beginning in the summer between our sophomore and junior years.

Q Did there come a time when the two of you decided to get married?

A Yes.

Q When was that? That is to say, when did you decide?

A Well, we decided in the fall of our junior year in college.

Q And what were your plans as to the time you expected [28] to get married?

A Well, we expected to get married at the time we both graduated from college. We were engaged for almost two full years.

Q And in what city were you married?

A In Washington, D.C.

Q Now, I want to show you Exhibit No. 9, which has been marked for identification but not received in evidence. I ask you if you can identify that exhibit?

A Yes, I can. It is a resume for my wife.

Q Who prepared it?

A She did.

Q Do you know when?

A Well, I believe it would be in the winter months of 1969; that is, the early months of 1969 — January, February, March perhaps.

Q After you got married where did you settle down?

A In New Haven.

Q And what were you doing there?

A Well, I was going to law school. I didn't go right into law school, but —

Q And when were you due to graduate from law school?

A In June of 1971.

Q What law school?

A Yale Law School.

[29] Q Looking at Exhibit 9 for identification, is that accurate?

A Yes.

MR. DOUGLAS: Your Honor, I move the admission of Exhibit No. 9.

MR. MOLLER: No objection.

THE COURT: Full exhibit.

(Plaintiff's Exhibit 9 for identification:
Received in evidence.)

BY MR. DOUGLAS:

Q Mr. Feldman, do you know what your wife did in the Office of the Solicitor, U.S. Department of Labor, which is referred to in the paragraph which is the second under "Employment Experience"?

A Yes, I do. She worked, I guess, when she was a freshman and sophomore in college as a secretary, typist and so forth, and then worked as a budget analyst. She worked there for three consecutive summers.

Q And what she did is described in that paragraph?

A That's correct. She did evaluate the personnel costs of the Office of the Solicitor.

Q Looking to the material under "Extra Curricular Activities" the statement is made: "Throughout high school I did volunteer work at Junior Village, a home for foster children".

[30] What did she do there, if you know?

A Well, the work she did, I believe, was in connection with a club to which she belonged and they would take the children on trips, prepare events for them, and I think as well as just visit them regularly.

Q Were the jobs with the Labor Department paying jobs?

A Yes, they were.

Q Now, Mr. Feldman, who paid your law school tuition?

A My parents did.

Q And during the period that you were in law school did Nancy's parents help the two of you out in any way?

A Yes, they did. They gave us a sum of a hundred dollars a month.

Q Do you recall what Nancy's first job was in New Haven?

A Well, her first permanent job was with the New Haven Legal Assistance Association. She had a couple of temporary jobs, office jobs, while she was waiting to find a job she wanted to take on a permanent basis.

Q And what did she do at New Haven Legal Assistance?

A She was in the Research Department of New Haven Legal Assistance. The Research Department did work for the Director of the Legal Assistance Association, Mr. Danforth, as well as doing work for individual lawyers who were involved in cases.

[31] She, as reflected in the resume, developed a cost benefit analysis system, analyzing how the budget of the Legal Assistance Association was spent. She did some analytical work on the kind of cases and the kind of complaints that clients in New Haven had. And she did work for attorneys on the staff of Legal Assistance, helping them prepare for cases.

For instance, she would do an analysis of residents of a particular part of New Haven as background for the case they may have been working on.

Q Do you recall what she was paid there?

A About \$6,000 per year.

Q Now, when did she join the Cogen, Holt firm which you referred to?

A Well, she joined that firm in the fall of 1969.

Q Were any of the people there personal friends of Nancy's, or yours, or your families' prior to the time that she started work there?

A No.

Q What was her starting salary?

A I believe it was about \$6,500 per year.

Q And did she work at Cogen, Holt until June of '71?

A Yes, she did.

Q And do you recall what her salary was at the time of her death?

A \$10,000 per year.

[32] Q When did you graduate from the law school at Yale?

A I graduated in June of 1971.

Q And during the period 1968, when you got out of college and were married, until you got out of law school, did you yourself have any jobs?

A Yes, I did.

Q What were they?

A I worked as Legislative Assistant to Senator Joseph Tydings of Maryland.

I worked for two law firms: DeBeVoise, Plimpton, Lyons & Gates in New York City; and Steptoe & Johnson in Washington, D.C.

I also worked for Yale University. And when I first arrived my work for Yale University was as a Teaching Associate. And when I first arrived in New Haven I worked for a small construction contracting firm in New Haven. It's the S. Barry Jennings Company.

Q What did you do for them?

A Well, that was in the summer of 1968. I installed screens and helped fabricate screens in their shop.

Q Were those paying jobs?

A Yes, all of them.

Q Now, during the period that you worked for DeBe-Voise, Plimpton, in New York, what summer was that?

A That was the summer of 1970.

[33] Q And where did the two of you live while you were working there?

A In New Haven. At our home in New Haven.

Q Well, did you stay in New York during the week, or how did you work the transportation?

A No. I commuted by train every morning and every evening, back and forth.

Q From New Haven to New York?

A That's correct.

Q And why did the two of you continue to live in New Haven during this period?

A Well, my wife had — her job was more important than my temporary job. I didn't feel that I would want to move away from New Haven if that interfered with her permanent job, merely for a temporary summer experience.

Q Can you describe in general terms the nature of Nancy's work at Cogen, Holt?

A Yes. Generally it was legislative analysis. She worked with four clients, municipalities primarily, analyzing their problems, analyzing and evaluating government programs, presenting the fruits of her analysis in written form and in oral form.

Q Did she like her work?

A Very much.

Q How was that shown?

[34] A Well, she worked hard at it, she told me she liked it. It was obvious she enjoyed it.

Q What did she like working about it?

A Well, I think she liked the intellectual challenge and she liked to deal with political kinds of problems; not po-

itical in the normal sense of running for elective office, but working with people who have different concerns and trying to solve their problems.

Q How often was she absent from work, that you know of, while she worked at these jobs in New Haven?

A Very rarely.

Q Did she work in the evening or on weekends ever?

A Yes, she did. She worked both at her office and at home very, very often.

THE COURT: What do you mean, in the evenings very very often?

THE WITNESS: Well, she would bring work home very, very often.

THE COURT: I see.

BY MR. DOUGLAS:

Q How about the weekends?

A Bring work home on the evenings and on weekends.

Q How about working in the office?

A She would put in long days, stayed late hours. She preferred to bring her work home with her.

[35] Q How would you describe her qualities in this work?

A Well, I would describe her as being very capable. She was very intelligent. She was articulate. She got along very well with people. She was imaginative and she was sensitive. She expressed herself very well. And she had a very good mind for this sort of work.

Q What were the two of you planning to do after graduation, after your graduation from law school?

A We were both planning to work in Washington, D.C.

Q Why in Washington?

A Well, that's where we both grew up. It's a place we

felt had the best job opportunities for both of us, and her family was there.

Q And what did she want to do?

A She wanted to continue working in her career.

Q At the time of her death had she actually applied for a job in Washington?

A I don't believe she formally submitted any applications. She had talked to a number of people about the possibility and she had begun exploring the possibilities of work there.

Q Why hadn't she filed a formal application?

A Well, we were expecting that she would as soon as she got back from New Haven that week, the week she was killed. I was planning to take the Bar that week and we [36] had a short trip planned, so she had plenty of time before we took our trip before the Bar to make all the formal applications and followup.

Q Had she updated her resume?

A I don't believe so.

Q Do you know why not?

A Well, that week I believe she was planning to do it, the week that she was killed.

Q What kind of a correspondent was Nancy?

A Very poor correspondent. She preferred to communicate by telephone, long distances.

Q Did Nancy ever discuss with you the possibility of improving her qualifications in her field?

A Yes, she did.

Q And what did she say and have in mind?

A Well, that year we both wanted to go to Washington and she was considering the possibility of going to law school in the fall of 1971.

Q Had she applied to a law school?

A Yes, she had.

Q Which one?

A George Washington.

Q Had she been accepted?

A Yes, she had.

Q But had she made up her mind that that's what she [37] wanted to do?

A No. I think she and I both felt that it was a close decision as to whether or not she should go to law school. We felt that it might allow her to have more responsibility as her career progressed in the same field and to gain a higher salary, but she enjoyed working very much in what she was doing and I think she was quite satisfied with that. So she hadn't decided whether to begin or resume working immediately or pursue her career by going to law school.

Q Had she had any discussions with anyone about a possible job in Washington?

A Well, yes, she had. We talked about it often. We talked to our friends about it.

Q But had she discussed it with anybody?

A Yes. I overheard her talking to people and I know that at one time she talked to a representative of the United States Conference of Mayors about the possibility of working for him when we got to Washington.

Q Where was that discussion held?

A That was at the Annual Meeting of the Connecticut Conference of Mayors. The Connecticut Conference of Mayors being a major client of the firm for which she worked.

Q And do you know the person with whom she discussed that?

A I believe it was Allen Beals who was at the United [38] States Conference for Mayors.

Q And what did she tell him and what did she tell you?

A Well, I remember that she came back from that meet-

ing — and this is just one instance where she discussed it and we discussed it — but she came back from that meeting and told me about how she had mentioned to him that she was interested in working for him, that we would be coming to Washington within the next few months, and she told me he expressed interest in her work there. And she, at that time, was very excited about that as one possibility for her to investigate.

MR. DOUGLAS: Your Honor, would this be a convenient time to take a short recess?

THE COURT: Sure. I'm very liberal in that regard.
(Short recess.)

* * * * *

[42] BY MR. DOUGLAS:

Q Mr. Feldman, before the recess at one point you testified that during one summer you worked in the office of Senator Tydings. Do you remember that testimony?

A Yes, I do.

Q And while you were working there was your wife Nancy working anywhere?

A Yes. She was employed at the Equal Employment Opportunity Commission in Washington.

Q And in what capacity?

A She was a Research Analyst for them.

THE COURT: Which summer was that?

THE WITNESS: This was in the summer of 1969,
your Honor.

BY MR. DOUGLAS:

[43] Q Do you recall what she was paid?

A Yes. She was paid about \$120 per week. It was a GS scale. Some level. A hundred twenty a week was about it.

Q Do you recall how many months she worked for the Legal Aid Society in New Haven?

A I believe it was about eight months.

Q Now, Mr. Feldman, what do you do in your present job, by way of summary?

A By way of summary —

MR. MOLLER: I am going to object to that. What he does is immaterial.

MR. DOUGLAS: Your Honor, I'm getting into the job opportunities for his wife in Washington.

THE COURT: You mean his familiarity with them?

MR. DOUGLAS: Yes.

THE COURT: You want to qualify him as —

MR. DOUGLAS: Yes, your Honor; knowing something about the field.

THE COURT: Overruled. For that purpose.

A I am Legislative Assistant to Senator Muskie and my job involves analyzing proposed legislation, recommending to him how to vote on it, drafting speeches and memoranda for him.

BY MR. DOUGLAS:

Q I think that's enough on that. But now are you familiar with the job opportunities for young people in legislative work on Capitol Hill?

[44] A Yes.

Q And how about the job opportunities in such work for people who aren't law school graduates?

A Well, the opportunities are great.

Q What do they do?

A Well, they do similar work, similar work to what I do myself.

Q Turning for a moment to Nancy, what did she enjoy in the way of activities outside of her job?

A Well, she enjoyed a great many activities. She enjoyed sports. She played tennis, very often, very well. She liked to ski. She liked entertaining, and we would entertain often. She was involved in the law school community. She worked with Law Wives, the group there.

Q Excuse me. What are Law Wives?

A That's the name of a group at the law school of people who are married to members of the law school class.

Q Anything else she enjoyed doing outside of work? What about bicycling?

A Well, that's right, excuse me. She liked to bicycle. She actually bicycled to work most every day.

Q Mr. Feldman, what were you and your wife's necessary living expenses in New Haven?

A Well, about \$4,000 per year.

Q And how was that split between the two of you?

[45] A Well, it was split, I think, a little more for myself than for her because I ate more, and so forth. But it was split roughly evenly.

Q Did you and Nancy have plans for a family?

A Yes, we did.

Q How many children did you and she plan to have?

A Well, we had planned to have perhaps two children.

Q And did you and she plan for her to take time off from her career for the children?

A Yes, we did.

Q And how long was that?

A Well, she felt that she would want to take off to raise the children until they got to school age. I don't think she would have completely abandoned any contact with her career, but she wanted to devote time to raising the children before they reached school age.

Q Did you have any period of time?

A Well, that might have been anywhere from — of course, depending on how many children — anywhere from four to eight years.

Q And during that period of four to eight years did she plan to drop her career entirely?

A No. I believe and her plans included maintaining contact, perhaps working part time at home, just to keep up her contact with the field during the period when she was [46] raising children.

Q And did you have a general idea when you wished to have children?

A Probably about five years after we began working in Washington.

Q That would have been about thirty years of age for her?

A She would have been about thirty years old, that's correct.

Q And why did you have that time in mind?

A Well, she wanted definitely to get established in a career in Washington and she didn't want to wait until she was much older than thirty to have children, and that seems to be about the time.

Q Did she look forward to having children?

A Very much.

Q Did she plan to return to work after the children were started?

A Definitely.

Q What makes you say that?

A Well, she told me often. We discussed it often. We both felt that she would be most happy if she could maintain a career of her own in addition to bearing and raising children, giving them the love that parents want to give to their children.

[47] We both felt that she, her life, would be most fulfilled if she continued to pursue the career she had already begun.

Q And in what field would you describe that?

A Well, in the same field that she had begun working in; legislative analysis and working with government programs and government problems.

Q Now, Mr. Feldman, what kind of an automobile driver was she?

A Good.

Q During the years you knew her how was her health?

A Excellent.

Q And, Mr. Feldman, how long were you married?

A Three years.

Q What kind of a marriage was it?

A It was a very good marriage.

Q And what kind of a person was Nancy?

A Well, she was a very intelligent person, very warm, she had a very full personality, very bright and, well, I was in love with the girl.

Q Well, I want to show you Exhibit No. 13 for identification.

A This is a picture of my wife.

MR. DOUGLAS: I don't know whether you have that or not, your Honor.

[48] THE COURT: This is a copy?

MR. DOUGLAS: Yes.

THE COURT: Yes, I have it.

BY MR. DOUGLAS:

Q When was that taken?

A That was taken in the winter months of 1970 to '71; just a few months before she was killed.

MR. DOUGLAS: Your Honor, I move the admission into evidence of Exhibit No. 13.

MR. MOLLER: No objection.

THE COURT: Full exhibit.

(Plaintiff's Exhibit 13 for identification: Received in evidence.)

BY MR. DOUGLAS:

Q Mr. Feldman, have you remarried?

A No.

Q Are you engaged?

A No.

Q Do you have any plans in that direction?

A No.

MR. DOUGLAS: That completes the Direct examination, your Honor.

[49] CROSS-EXAMINATION

BY MR. MOLLER:

Q Mr. Feldman, can I inquire, sir, of what Bars you are a member?

A Of the Bar of the District of Columbia.

Q I take it you did not take a bar examination in Maryland?

A That's correct.

Q Nor in Connecticut?

A That's correct.

Q Nor in New York?

A That's correct.

THE COURT: You left out California. Most of them take California.

MR. MOLLER: Is that right? Perhaps that's why I hear so many screwy decisions from California.

BY MR. MOLLER:

Q Mr. Feldman, I take it, then, after your graduation from Yale Law School that you went directly into work for Senator Muskie?

A No, that's not true.

Q All right. What was your work then?

A Well, directly after my graduation I mourned for a month or two.

Q I appreciate that, sir.

[50] A I didn't do anything.

Q But I mean as far as your working.

A What was my next job after that?

Q Yes, sir.

A I'm sorry. I didn't understand.

Well, I worked for the Democratic presidential campaign. Not for Senator Muskie, but for Senator McGovern.

Q And was that a paid job?

A Well, initially it was not. I go' only expenses for that.

Q But then coming along to your next job, it was with Senator Muskie?

A That's correct.

Q What was your pay scale, sir?

A When I began working one year ago it was \$18,000 a year.

Q And what is it now?

A 21,000.

Q Do you have non legal assistants also working for you or under you, Mr. Feldman?

A Yes.

Q And what are they paid?

A Well, I have a secretary paid about 9,700; a person paid 1,300 with no advanced degree — 13,000, pardon me.

Q With no advanced degree?

[51] A That's correct.

Q And your wife, Mrs. Feldman, did not have an advanced degree?

A Well, the person I was talking about I don't believe has even a college degree, just some college. \$13,000 a year.

Q Right. But you said with no advanced degree. That was your language, was it not, Mr. Feldman; with no advanced degree, 13,000?

A That's correct.

Q And your wife did not have any advanced degree?

A No degree beyond the Bachelor of Arts, that's correct.

Q All right. Now you stated that she had applied to George Washington University?

A That's correct.

Q And had she taken her L.S.A.T.?

A Yes.

Q And can you recall what her score was?

A 660.

Q And I take it at college she was just below B student?

A She was about a B student. Her average in the last year was higher than her average at the beginning.

Q Well, her overall average was under 3, wasn't it?

[52] A I believe it was just about 3.

Q 2.94, wasn't it?

A That's what the transcript says.

Q So that she would be just under a B student?

A I assume that's what — I don't know exactly what the grading scale is.

Q Well, you have it in front of you. Would you mind looking at it, sir?

A Sure.

The transcript, do you want me to go?

Q Right. It says 2.94, correct?

A Right. At the bottom of each term it shows the term average. For instance, in the spring of '68 it was 3.5. Cumulative average at the end of that time was 2.94.

And so forth. It goes back like that. That's right, 2.94.

Q So cumulative average would go, starting the first year — I am referring to Exhibit 10 — 2.4, 2.5, 2.6, 2.67, 2.80, 2.83, 2.90, 2.91 and a cumulative of the last semester of 2.94?

A Yes.

Q And as of June of 1971 she had not definitely accepted the George Washington Law School acceptance?

A That's correct.

Q And as far as you know —

[53] A Pardon me. She had.

Q She had applied and accepted, but —

A Didn't accept. And she had put down a deposit.

Q When were you accepted by Yale, sir? When did you send in your indication that you were going to go to Yale?

A Well, they asked me for a deposit and I put it down soon after I got the acceptance.

Q Right. In other words, from your recollection, you were accepted before April 15th, were you not?

A This is in the spring of 1968.

Q Yes.

A I think so.

Q In other words, the point of the matter is that in all probability if a person has been accepted in law school these days and has not yet made her mind up by June 7th, isn't it more reasonably probable than not that she would not have gone to George Washington?

A I don't know. We felt that — she was, at that time,

very busy in finishing up her work and she was planning to go through the job application process and think about the option which was held open of going to law school the week that she was killed.

Q But all of your conversations that you had that Mr. Douglas elicited from you was conversation with respect [54] to going to work?

A I beg your pardon, you asked me what I testified to Mr. Douglas? We had conversations very often because it was very important to us and we talked about all the options, including law school and going to work.

Q Mr. Feldman, if you don't understand my question would you let me know? I'll be glad to rephrase it.

My question was was it not so that the testimony elicited from you from Mr. Douglas about conversations with respect to your wife's future were conversations with respect to working in Washington?

A I still don't understand. You asked me what Mr. Douglas elicited from me.

Q Sir, do you recall testifying in answer to Mr. Douglas' question as to whether or not you can recall her talking to many people about attempting to find a job in Washington?

A I remember testifying that she did talk to many people about attempting to find a job in Washington.

Q And that she wished to work in Washington because of the job opportunities there?

A That was one of the reasons she wanted to move there, that's correct.

Q Yes. And actually the Washington area is perhaps one of the more expensive areas in the country in which to [55] live, isn't it?

A Well, it depends on the time you're talking. Sometimes it's more expensive, sometimes it's less expensive. It depends on the economic cycles.

Q But we'll say 1970 — in 1974 it's certainly more expensive to live in the Washington area than many other areas of the country, is it not?

MR. DOUGLAS: Your Honor, I object. I don't think —

MR. MOLLER: I'll withdraw the question.

BY MR. MOLLER:

Q Sir, do you feel —

A I mean it was no more expensive in Washington than it was in New Haven.

Q Sir, do you feel that you presently, by yourself — I take it in your home on — is it Sentinel Drive?

A That's right.

Q Do you rent or do you own?

A That's my parents' residence and that's where I reside.

Q All right. But at the present time you are earning \$21,000 to support yourself, correct?

A That's correct.

Q And do you think it's reasonably probable that Mrs. Feldman could have subsisted in the Washington area on [56] \$4,000 a year?

A Well, yes, absolutely.

Q Isn't it so, sir, that the government records themselves indicate that the average amount of money to support two people in Washington is close to \$14,000 a year?

A Well, what do you mean by "support"?

Q To support adequately.

MR. DOUGLAS: Your Honor, I object. I think that's expert testimony.

He testified on what it cost in New Haven and that's proper testimony for an expert, if he's trying to project in the future after her death.

MR. MOLLER: I claim it, your Honor. I take issue with the fact of \$4,000 a year in New Haven. I'm leading up to that.

THE COURT: Overruled. This is Cross-examination.

MR. MOLLER: Do you want the question read?

THE WITNESS: Certainly. Thank you.

MR. MOLLER: May the question be read, your Honor.

(Question read back.)

A I'm without knowledge of what the average living costs, including everything, are for people in Washington.

The subsistence, which you asked me before, which [57] which necessary support, I don't think that's \$14,000 for two people. I don't believe that's correct in any way.

Q (By Mr. Moller) What would your estimate be, sir?

A Well, you asked subsistence and necessary living expenses.

MR. DOUGLAS: Your Honor, could I be heard for a moment on this?

I think Mr. Moller is getting into a question of living expenses and the basic question, as I understand it, in Connecticut is the expenses necessary to support life and to make the person who died able to continue living. It isn't average living expenses.

It is what it costs for essentials such as food, share of rent, things of that kind; not what people spend on clothes and trips and going to the movies.

MR. MOLLER: I think Mr. Douglas is in error, your Honor. It includes all personal expenses of the person and to the degrees to which she is accustomed.

THE COURT: Overruled.

BY MR. MOLLER:

Q What would be your estimate, sir?

A I'm sorry.

[58] Q What it would cost for two people to subsist comfortably in Washington in 1974. [?]

A To subsist comfortably, I believe that necessary living expenses would be accurately reflected by a figure of about \$4,000.

If you add other things it depends upon, you know, different people will spend more money on recreation, on other non essentials.

Q So you say, Mr. Feldman, that two people could live comfortably in Washington on \$4,000 a year?

A Well, no. I said two people could have their necessary living expenses at \$4,000 a year. And living in comfort might take much more and for some people might not take very much more. You know, it might be more. It depends what — you are asking me —

Q As I take it from your figures then, sir, it took only \$4,000 for you and Mrs. Feldman to live in New Haven three years ago, that even with the inflation that in the Washington area you could live for less money than in New Haven?

A No, I'm not testifying about that. I think this suit rests on conditions at the time she was killed by Allegheny Airlines, which was in 1971, and my testimony reflected my experience in New Haven at that time.

As I said, I believe that living expenses in Washington, from my recollection and from our conversations about it, were slightly higher in some things, slightly lower in others. But at that time necessary living expenses in both cities were approximately the same.

BY THE COURT:

Q Well, your wife was earning about \$10,000 a year at that time, right?

A That's correct, your Honor.

Q And you were getting a hundred dollars a month from home?

A That's correct.

Q So was any money being saved?

A Yes, it was, your Honor.

Q Any evidence of savings?

A I believe that there may be some evidence in the statement of the accountant. We had at the time of death some assets.

We also would — I'm sorry if I'm not forthcoming to Mr. Moller, but there is a question in my mind, your Honor, about what are the estimated living expenses. We would spend money on things; travel, entertainment, which I would not consider necessary living expenses. Now, my estimate does not include that. And if that were to be included, then the estimate would have to be increased.

BY MR. MOLLER:

[60] Q And to what figure, sir?

A Well, it depends what you would like to include to increase the figure.

Q Well, for instance, let's take clothing alone. What would your estimate be for Mrs. Feldman's clothing alone?

A Well, necessary clothing to —

Q No. Her regular clothing.

A Regular clothing — in my mind, your Honor, in thinking about this I considered in that estimate the conditions in New Haven and our experience at that time, and I included in that estimate what I considered to be necessary clothing to go about her business.

Now, she liked to entertain and she would buy clothing to wear in the evenings sometimes. I didn't include that. But perhaps you might include an extra three or four hundred dollars, I suppose. I hadn't thought about it. But now that is for, you know, evening clothes not connected with work.

MR. MOLLER: Can I have Exhibit 13, your Honor, the picture?

THE COURT: Yes.

THE WITNESS: I have it.

Your Honor, I have it.

Q (By Mr. Moller) Now, for instance, take the coat that she's wearing in that picture. What would you imagine [61] that costs, sir, with a fur collar?

A I believe at that time it was about between \$100 and \$200. Probably about \$175. I don't recall —

Q So wouldn't it be fair to say, Mr. Feldman, that with your wife working for this firm in New Haven, that she wanted to work at a responsible job in Washington, that she would have to have a clothing allowance of at least \$100 a month?

A No, I don't think that's fair to say.

By the way, she never wore this coat to work. It was a very special thing to her and she didn't ever wear it to work.

Q So she'd have to have even more money for coats?

A No. That's not what I said.

Q Well, what would you say would be a fair amount for clothing for a woman, a young attractive woman twenty-five years of age who wants to make a go of a professional life?

A What would I say would be a fair amount? Well, I suppose a couple hundred, \$300 a year.

Q \$300 a year?

A \$400 a year. I really don't know. And I'm talking of my recollection in 1971 and not today.

Q So that if it were \$300 a year she would have expended half her budget just buying one coat?

[62] MR. DOUGLAS: Your Honor, I object. That's a misleading question. The witness didn't testify to that.

MR. MOLLER: He said the coat cost \$175 and he estimated three hundred to four hundred a year. If you take three hundred —

THE WITNESS: Mr. Moller, maybe we can read back the transcript, but — and, your Honor, I don't know if this is proper or not —

MR. MOLLER: Well, there is no question pending now, Mr. Feldman.

Q (By Mr. Moller) Let me ask you this: Where did —

THE COURT: Well, these are questions on Cross-examination and there is no reason you shouldn't answer them.

If there is any determination to be made as to what is or what is not necessary, or what is or is not to be taken into account in assessing damages, that's for the Court, not for you.

THE WITNESS: Certainly.

THE COURT: The questions that are asked can be answered if you know the answers. If you don't, that's something else again.

But don't try to avoid answering on the ground that you are applying rules of evidence to what is proper [63] to ask.

THE WITNESS: No. Actually, if you'll pardon me, my problem with the question —

BY MR. MOLLER:

Q Let me put it to you this way: Where did your wife generally buy her clothes?

A Ann Taylor, Casual Corner.

Q Ann Taylor?

A That's right.

Q Was that in Washington?

A No. New Haven.

Q Where else?

A Casual Corner in New Haven.

Q How about in the Washington or Bethesda area?

A Well, she would — you know, I believe her parents would buy her things, clothes from different stores. She didn't do her shopping in Washington when she went to shop for herself.

Q So in addition to the hundred dollars a month that your parents — or, excuse me — her parents were sending a hundred dollars a month?

A That's correct, sir.

Q And your parents were paying your tuition, correct?

A That's correct.

Q And then in addition to that her parents were buying [64] her clothing?

A They would buy her special items of clothing, but not normal everyday clothing.

Q How did she get along with her parents?

A Very well.

Q And how did you get along with them?

A I got along with them very well.

Q I take it, however, at the present time there's some animosity between —

A No.

MR. DOUGLAS: Your Honor, I object.

A There isn't.

Q Well, can I inquire, then, why —

MR. DOUGLAS: Your Honor, I have an objection.

I don't see the point of getting into any problems that may exist or may not exist as between this man and his in-laws.

I think it is an obvious effort to divert attention from the issue.

THE COURT: Let's get the question first.

MR. DOUGLAS: Excuse me.

MR. MOLLER: May the last question be read, your Honor.

(Question and answer read back.)

MR. MOLLER: I hadn't finished.

[65] Q — between you and your in-laws?

MR. DOUGLAS: Objection.

THE COURT: Well, it has been answered no.

A No, there isn't animosity between us.

THE COURT: I think you have to drop it there, because I think it is irrelevant from here on.

MR. MOLLER: There is just one area I would like to put, which I think is relevant.

THE COURT: Well, let's hear it. I can't rule on it until I hear what it is.

BY MR. MOLLER:

Q Do you know why they do not plan to attend, to come and testify in this hearing?

A Well, the question of this hearing and the question

of this suit is very painful to both myself and for her parents when you have a girl like this snuffed out in that crash, and it's quite a strain on all of us involved.

Q All right. Did Nancy have any sisters or brothers?

A Yes. She had one brother.

Q And how old is he?

A He is today, I believe, twenty-five.

Q And does he have any children?

A No, he does not.

Q Is he married?

A No, he is not.

[66] Q I should have asked you first, I guess.

Now, as far as your own family plans, Mr. Feldman, I take it you stated that you and Nancy planned to have two children, is that correct?

A Approximately.

Q And that your estimate of time that she would have to take off from work would be from four to eight years?

A That's correct.

Q But if you were going to have two children it would be more probably eight years, would it not?

A It depends. I would stick by my estimate. It would be closer to eight than four, probably.

Q Right. In all probability. Because if you had two children and she wished to maintain them as a mother until they were of school age, that would mean that she would have to wait until one became four and then in all probability until the second became four before they could go to any school; would you agree, sir?

A Probably. That's probably correct.

Q So that if she started having children at age thirty,

then she would be going back to work at age thirty-eight; correct?

A Well, yes.

As I testified, I think she would have maintained part-time work in consulting, and so forth, her contact with [67] work in that period.

Q Now, does Nancy's mother work?

A She worked until about the time Nancy was killed.

Q And then she stopped working?

A That's correct.

Q So you cannot be certain at this time, obviously, as to whether or not at age thirty-eight, whether Nancy would go back to work or whether she would assume the role of house mother, wife of a successful attorney and stay in the home, do you?

A Well, as certain as I can project, I am certain about it. Obviously, I can't predict what would have happened.

Q But your own career, sir, as a graduate of Columbia and Yale, obviously you ultimately want to get into the practice of law, do you not?

A I had thought about it at that time, yes. I planned to at that time.

Q But I mean as of now — question withdrawn.

Your areas of growth, even with Senator Muskie, setting aside the 1976 elections, would be you are fairly near the top at the present time, are you not?

A No.

Q No? How far, how many more scales are there up?

A Well, I think the current maximum rate of pay for [68] staff persons like myself is \$37,000 a year.

Q But do you presently plan to stay with the staff as your life career?

A I don't believe so. But my life, I suppose, is a long one.

Q And the point of the matter is that in Washington there is a lot of entertainment done in the home, is there not?

A Some people do and some don't.

Q So that wouldn't it be fair to say, Mr. Feldman, that pretty much as far as your plans and Nancy's plans were concerned, that the most that you probably could look ahead was the next five years; in other words, from 1971 to 1976?

A Well, in terms of whether she would be staying with a particular firm or not, that's correct. But in terms of whether she would have pursued a career, that's not correct.

Q All right. Now as respects her career, sir, showing you these income tax returns for the years 1968, '69 and '70, do you recognize those returns as, first 1968, Mrs. Feldman's return; and then '69 and '70 as your joint returns?

A Yes.

MR. DOUCLAS: Have you got an extra copy?

MR. MOLLER: I do not.

MR. DOUGLAS: Are you introducing this 1971 return?

[69] MR. MOLLER: Yes.

Any objection?

The returns are all stapled together. May they be offered as one exhibit, your Honor, 1968 thru 1970.

THE COURT: Defendant's Exhibit A.

(Defendant's Exhibit A: Tax returns 1968 thru 1970, received in evidence.)

MR. MOLLER: Does your Honor wish to see them first? I am going to use them.

THE COURT: Go ahead and use them.

BY MR. MOLLER:

Q I take it, Mr. Feldman, with respect to 1968, that this return represents Nancy's earnings only, is that correct?

A That's correct.

Q And in 1968 her earnings were \$2,398.24?

A Well, that's the adjusted gross income. That includes interest, I believe.

So if you don't include that as earned income, that would be \$2,370.54.

Q But, at any rate, in 1968 as far as an interest item is concerned, the interest item is \$96?

A It says. That's correct.

Q And I take it then in 1968 you did not earn enough money that you had to file a return?

[70] A I don't recall.

Q Okay. Then in 1969 I think you indicated that Mrs. Feldman's pay was \$6,500 a year, correct?

A Well, in 1969 she was working in the spring for New Haven Legal Assistance. At that salary — excuse me. At about the salary rate of about \$6,000, at the time she left. Possibly a little higher, \$6,200.

During the summer she worked for the Equal Employment Opportunity Commission at a rate that I recall at about \$120 per week. And during the fall she was hired at a salary rate of \$6,500.

So at the conclusion of that year she was earning at the rate of \$6,500.

Q Well, of that amount shown on the 1969 return, Mr. Feldman, how much would have been earned by Mr. Feldman?

A Well, I don't have the figure off the top of my head, but I believe they are in the W-2 forms which are in the exhibits.

MR. MOLLER: That's what I'm looking for now. Could I refer your Honor to Exhibit 11.

Q (By Mr. Moller) So I take it, showing you Exhibit 11, Mr. Feldman, that Mrs. Feldman made \$1,006 from GS Services, or GS Administration?

A That's General Services Administration. Underneath it says Equal Employment Opportunity Commission. So [71] her employer was — I guess the General Services Administration is some kind of administrative — they may have sent the check through there, or something.

Q All right. And at New Haven Legal she made \$2,843, so that would get up to \$3,800; is that correct?

A That's correct.

Q And then the City of New Haven \$160. And Man-power, \$179. Correct?

A That's what it says.

Q So then the balance of that amount as shown on the 1969 return, making a total of \$6,800, would be monies which you had earned?

A Yes.

Q All right.

A I don't have the total.

Q Right. Then in 1970, I take it that all of the \$11,215.69 was money that Mrs. Feldman had made, in view of the fact that Plaintiff's Exhibit 12 shows Cogen, Holt of \$7,290 and then another \$3,846.22?

A I think those two W-2 forms on that page are for different years.

THE COURT: Aren't they different years?

BY MR. MOLLER:

Q For different years?

A That's right.

[72] Q So for 1970 she was making \$7,290?

A Yes, that's right.

Q And not \$10,000?

A That's right.

Q And then for 1971, having worked five months, in the five month period, she made \$3,846?

A Yes. Those are all the paychecks that were sent to her.

Q So again that is not quite up to the \$10,000?

A I don't understand.

Q Well, the year before she was making \$7,290 a year, correct?

A Salary. I don't remember exactly what the salary was, but the total she made in that year was that amount. Her level was higher at the end of the year than it was at the beginning of the year.

Q But for five months' work she was getting approximately \$700 a month, right?

A In 1971.

Q Right.

A Well, she worked about five months. Five into that is —

Q That would make it about 8,400 a year?

A Well, no. It's five into that.

It you ask me that, it's seven hundred and sixty-[73] something dollars plus. So \$760 a month, which was —

Q About 8,800 a year?

A I didn't multiply. If that's what it is.

Her salary rate, I know, was higher at the time she was killed than it was at the very beginning of the year.

Q But at any rate her average monthly earnings for

the year of 1971, the last year before her unfortunate death, was \$760 a month?

A Yes. Whatever that adds up to.

Q All right. And then I take it the difference between the \$7,290.59 in the year 1970 and \$11,215.59, the \$4,000 difference would be the earnings you had that year?

A That's correct.

Q And I take it, again, that your interest had now increased from the original interest of \$96 a year up to an interest of \$187.40?

A That's correct.

Q So that in the year 1969 the total income which you and Mrs. Feldman would have available —

* * * *

[76] BY MR. MOLLER:

Q So in 1969, Mr. Feldman, in addition to the \$6,800 in wages and salaries, you and Mrs. Feldman would also have received another \$1,200 from the Hollander's, correct?

A That's correct.

Q So that would make it \$7,000 a year, correct?

THE COURT: Well, I don't think that is income, is it?

MR. MOLLER: I mean \$8,000.

No, but this is how much it costs to maintain themselves, your Honor.

THE COURT: All right. Available income.

MR. MOLLER: That's right.

THE COURT: All right.

Q (By Mr. Moller) So that would make \$8,000 available to maintain you and Mrs. Feldman, correct?

A Well, it's not all disposable income.

Q Well, sir, did you or did you not have available \$8,000 in income to support the two of you?

A Including tax and so forth, that's correct.

Q We will take it a step at a time.

Now, the taxes at that year were \$749.08, correct?

A That's correct.

Q All right.

[77] A Wait. Pardon me.

That's Line 23. That's the total of the amount withheld.

It says here on Line 18 the tax. That's \$841.31. The \$749.08 was the total amount withheld.

Q So the total amount is \$841?

A Right.

Q So that out of \$8,000 available to you, paying \$841 in taxes, you and Mrs. Feldman would have \$7,200 a year on which to live in New Haven?

A Well, I think we also paid taxes to New Haven.

Q What kind of taxes?

A Personal property taxes.

Q You mean on your automobile?

A That's correct.

Q But you didn't take a deduction for them?

A No. No. We took the standard deductions because we wanted —

MR. DOUGLAS: Would the witness speak up, please?

MR. MOLLER: He said he took a standard deduction.

Q And how much were the taxes in New Haven?

A Less than a hundred dollars. I don't recall.

Q So, \$7,100 a year?

[78] A Well, I mean from these figures that's what's left over from these figures. I haven't thought of anything else.

Q Then in 1970 you have the \$11,215.59 which was reported income, plus another \$1,200, which make it \$12,400; correct?

A That's the sum.

Q In addition to which you say that the Hollanders were also buying Mrs. Feldman's clothes?

A I said they bought her some special items of clothing.

Q All right. And then your tax, I take it, that year was \$1,663.66?

A Well, I think that was corrected by the — if you look at this, it was corrected by the Internal Revenue Service. I think there was a mistake. So it was just a computation error.

So that the total was \$1,674.66.

Q So that taking that from the \$12,400 you would have in excess of \$9,000 a year for your support?

A Well, I mean that is the arithmetic result you get.

Q Yes. But this is what this case is all about, Mr. Feldman, isn't it?

A Well, I'm sorry, but there's another deduction item. I mean there are other items to consider that I haven't thought of.

[79] Q Well, there are other items. For instance, I'm not including the interest item of \$187.40, am I, which I presume that you are not using because it is staying in either the First Federal Savings & Loan or the First New Haven National Bank, correct?

A Right.

Q And how many automobiles did you own in 1970?

A One.

Q What kind of a car was that, sir?

A That was a Chevrolet, two-door hardtop, 1964.

Q And your recollection was that the New Haven automobile tax on the 1964 Chevrolet automobile was around \$100?

A No. I believe I said it was less than a hundred dollars. I don't know exactly what it was.

MR. MOLLER: May I have just a minute, your Honor?

I have no further questions.

MR. DOUGLAS: Just a few on Redirect, your Honor, if I may.

**REDIRECT EXAMINATION
BY MR. DOUGLAS:**

Q Mr. Feldman, do you recall when your wife got her raise to \$10,000 a year in 1971?

A I believe it was on May 1st.

[80] Q Now, you mentioned an estimate of your necessary living expenses for the two of you at \$4,000 in New Haven. And on what was that based?

A Well, that was based on — the reason I was having problems with those questions is —

Q Suppose you answer the question.

A Well, that was what I considered and recalled to be the necessary food, shelter, clothing and medicine that we both spent to keep ourselves going in occupation.

Q My question was how did you arrive at that figure?

A Well, I took our rent over the period, which was an average of \$180 per month, including utilities, and divided that in half, split that in half, and you get \$90 a month. So you multiply that by twelve and you come to \$1,080.

Now as to food, clothing and medicine, necessary

food, clothing and medicine, I estimate that between the two of us on those items we spent about \$40 per week. And I probably ate more food than she did, and so forth. But again just dividing it in half, taking the \$20 per week and multiplying by fifty-two weeks, that comes to, I believe, \$1,040. That was how.

Then adding those two up I believe it comes to \$2,120. And that's how I arrived at my estimate.

MR. DOUGLAS: That's all I have, your Honor.

[81] RE-CROSS-EXAMINATION

BY MR. MOLLER:

Q So I take it, then, in 1970 — Mr. Horton has corrected my arithmetic; it is actually \$10,000 available — that in 1970 you saved \$6,000?

MR. DOUGLAS: Your Honor, I object. That's outside the scope of my Redirect.

MR. MOLLER: No, it isn't.

It goes to the credibility. I don't know anyone in the Town of New Haven, other than someone on OEO can subsist on \$20 a week.

THE COURT: Well, as he says, he estimates what they spent.

MR. DOUGLAS: Yes, your Honor.

THE COURT: Now the question is against that income what happened to the rest, or how was it accounted for.

A Okay. Well, the remainder — and I don't know whether it was exact, but whatever it was — but the remainder of the funds were spent for savings, they were spent on travel. We would travel back and forth to Washington to visit, and so forth.

They were spent on special items like books. Every semester I'd have a hundred dollars or something for that.

[82] They were spent to keep the car in repair. We didn't use it very much. She didn't use it to go to work. So we'd have to buy new tires, or whatever.

We spent a couple weekends, I believe, skiing. That took some money.

And we spent some of the remainder entertaining. I had a couple people over for a fancy dinner for two or three couples and that might add up to \$30 or \$40.

When you do that I suppose, you know, depending, \$20, \$40, whatever, we'd entertain.

Other recreation, tennis rackets and that sort of thing, tennis balls. That's how the rest of that money was spent.

Q And this would be normal living, then, for Mrs. Feldman?

A Well, you know, what amount of that excess over what I estimated to be necessary would be hers and what would be mine, I don't know, or haven't thought about that. But that's the way we lived our lives, that's true.

Q And during the year 1970, while you did make some savings, certainly you did not put aside \$6,000 did you?

A I, frankly, don't recall exactly how much we saved and so forth. We put some money in stocks and I don't remember exactly what happened to that. I don't recall exactly.

[83] I mean I include that in savings. You put it in stocks, and it went down.

Q Can you explain, then, why there are no stock dividends shown on the 1970 return?

A Well, because the kind of things we would invest in were small. I think they may be shown here. They would be things that didn't pay dividends.

Q Such as?

THE COURT: Don't be embarrassed. Everybody lost money during that period in the stock market.

A I mean I don't remember exactly what the names of the companies were. There was something called Presley Development Company, which I think we still hold. I mean I still have that stuff. And that went down.

And there was a software computer company, I believe.

Q (By Mr. Moller) Anything else?

A We bought stock in something called — in Bausch & Lomb Company, which went up and went down.

I think, you know, probably other things. I don't really recall.

Q But in 1971, then, you were more or less pitching your living expenses on at least \$10,000 a year being earned by Mrs. Feldman, is that correct, sir?

A Well, by living expenses you mean all these things that we've been discussing?

Q Yes.

[84] A And, I'm sorry, that was my question before was the definition. But all the things I've been discussing we were not necessarily expecting for her to be earning that amount.

We were just — well, I mean there was the possibility of her going to law school.

* * * * *

[87] JOEL COGEN, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you please state your name.

THE WITNESS: My name is Joel Cogen; J-o-e-l, C-o-g-e-n.

THE CLERK: And where do you live, Mr. Cogen?

THE WITNESS: I live in the City of New Haven, 50 Alston Avenue.

DIRECT EXAMINATION
BY MR. DOUGLAS:

Q What is your position?

A I'm a partner in the urban affairs consulting firm of Cogen, Holt & Associates. I'm Executive Director of the Connecticut Conference of Mayors and Municipalities.

THE COURT: Don't let your voice drop, Mr. Cogen.

THE WITNESS: Want me to repeat it, your Honor?

I'm a partner in the Firm of Cogen, Holt & Associates; and I'm Executive Director of the Connecticut Conference of Mayors and Municipalities.

Q (By Mr. Douglas) And where is that firm of yours located?

A In New Haven.

Q And what does it do.

[88] A The firm provides consulting services to a wide variety of clients and programs, generally affecting government or affecting development and related activity.

Q Was that true in 1971?

A Yes, it was.

Q Could you give us some representative clients of the firm?

A Well, one I mentioned before, the Connecticut Conference of Mayors and Municipalities, for which the firm provides full staff services.

Other clients include the Yale-New Haven Hospital, Yale School of Medicine, the Ford Foundation, Rockefeller Brothers Fund, St. Paul Church in Norwalk, Fairfield Church Housing, New Haven Housing Authority, Middletown Redevelopment Agency. A wide variety of clients.

Q And how long have you been with your firm?

A Since its inception in 1968.

Q And what is your own educational background?

A I graduated from Cornell with a BS, and I have a law degree from Yale Law School.

Q Do you have clerical and professional people?

A Yes, we do.

Q And about how many, total, people do you have today?

A Today we have —

MR. MOLLER: Excuse me. Excuse me, Mr. Cogen.

[89] I object to what he has today. I have no objection to what he had in 1970 and 1971. Because there is no evidence that Mrs. Feldman was going to stay with this fine firm.

THE COURT: What is the purpose of it?

MR. DOUGLAS: It is to qualify him in the field, to show that he knows the legislative field, that he's a person of eminence and authority in it.

THE COURT: All right. Overruled.

A We have approximately twenty-five to twenty-seven, something like that, full-time employees and other part-time employees, which bring the total to something like thirty-five; between thirty and thirty-five.

Q (By Mr. Douglas) Do you have a split in your firm between partners and associates?

A Yes, we do.

Q And then are there associates who are professional people?

A All the associates are professional people.

Q Now, how many did you have in —

A Professional as distinguished —

THE COURT: What's professional?

THE WITNESS: I say professional, including administrative and research. Professional as distinguished from clerical, which you asked me before.

[90] MR. DOUGLAS: The judge asked you —

THE WITNESS: What is their profession, your Honor?

THE COURT: Yes.

THE WITNESS: Their profession —

THE COURT: Anybody not clerical?

THE WITNESS: Yes.

You see, the firm is a consulting firm. And I suppose in one sense the profession is a profession of consultants.

I write on my income tax form "consultant". I, on the other hand, am a member of the Bar admitted to practice in the State of Connecticut and I'm a lawyer, although I would respond that my profession now is a profession of consultant.

There are other members of the firm who are lawyers, some members of the firm who are professionals are not lawyers. Of our five partners, four are lawyers and one is a non-lawyer.

Of our associates —

THE COURT: Were you ever a practicing lawyer, Mr. Cogen?

THE WITNESS: Yes, I was, your Honor.

THE COURT: Where?

THE WITNESS: I was General Counsel for the New [91] Haven Redevelopment Agency. I've never practiced law privately, but I've practiced —

THE COURT: But you are a member of the Bar in Connecticut?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

BY MR. DOUGLAS:

Q Now, about how many people did you have in 1969?

A I'm not sure. Somewhere between six and twelve people. I think when the firm was formed there was five or six people, and I think by then we had grown to something like ten. It was around ten.

Q When did Nancy Feldman commence to work with your firm?

A In September of 1969.

Q And when did she stop working for the firm?

A When she died, in June of 1971.

Q What was her starting salary at an annual rate?

A \$6,500.

Q Do you recall when her first raise was?

A In May of 1970.

Q And what was she raised to then?

A She received an additional thousand dollars, which would have made her salary then \$7,500.

Q And did she receive another raise?

[92] A Yes. Six months later she received another raise of \$1,500.

Q What was the precise date of that raise?

A It was in November of 1970. I don't remember what date in 1970, but it was just six months after the preceding raise.

Q And did she receive a last raise?

A Yes, she received the last raise just six months after that. Another thousand dollars.

Q What was her salary then?

A \$10,000 a year.

Q And what was the date of that raise?

A That was in May, sometime in May of 1971.

Q Now, why did she get those raises?

A Because she was — there were merit — she got the raises because she deserved them, because she was doing a good job, and they represented merit increases.

Q By the way, were there any fringe benefits that Nancy received during your firm?

A Yes.

Q What were they?

A You mean including vacations or things that could be measured in cash?

Q Well, for example, did the firm handle any hospitalization?

[93] A Yes.

Q Medical?

A Yes. The firm provided CMS, Blue Cross and Major Medical.

CMS is — I don't know what they call it in Washington, it's the Blue Shield. CMS, Blue Cross and Major Medical.

The best policy available from CMS; the best policy available from Blue Cross; and an excellent Major Medical policy.

Q And who paid?

A The firm paid a hundred per cent of the cost.

Q Now, was Nancy a professional or clerical employee?

A Professional employee.

Q What was her position?

A She was an associate in the firm and she was an Administrative Research Assistant for the Conference of Mayors.

Q And what did she do in the way of work?

A Well, she did a lot of different things, depending I guess in part on what time we're talking about and depending on the particular client that she was assigned to. But there was a general thread that ran through it all. It was, from the beginning, of a very highly analytic nature and —

Q Dealing with legislation?

[94] A For the most part — I was going to say, for the most part it dealt with legislation in one way or another. She was analyzing existing legislation and was developing

proposed legislation. And that was the principal part of her work; both for the Conference of Mayors and for other clients.

Q How did Nancy perform in her work with the Connecticut Conference of Mayors?

A Very well.

Q What does the Connecticut Conference of Mayors do?

A The Connecticut Conference of Mayors represents the cities and towns in Connecticut in dealing with the State Legislature and the General Assembly and dealing with state administrative agencies — basically legislative lobbying and administrative lobbying, including the development of the legislative program.

It represents the cities and towns in Connecticut at the federal level with the Congress and the federal administrative agencies. It does a wide variety of program development work for the cities and towns. It is, in general, the spokesman for and advocate of mutual interests of the cities and towns in Connecticut.

Q Now, did she talk with the state legislators in connection with the work of the Connecticut Conference of Mayors?

[95] A Yes. But only toward the end. Her career showed a progression and a growth from the time she arrived.

As I said, there was this thread of research analysis administrative work that gradually increased in the responsibility and, in fact, in exposure to the public. It was in the closing days of her work for us that she had become increasingly involved in highly complex legislation and, in fact, at the very end was working very closely with the legislators, members of the General Assembly, and indeed was doing direct lobbying at the State Capitol in the last days she worked for us.

Q Why did you want Nancy to come back from Washington on June 7th of 1971?

A Because there were three more days left in the legislative session. Their session was going to end on Wednesday. And she had left, had plans — they had to go to Washington the preceding Friday because her husband had to study for the Bar exam. And we had three days left in the session and she was handling some very crucial legislation on which she had done the research, analysis, the drafting, and she had close contacts with the key legislators on those bills and we needed her back because it was essential to get those bills passed.

Q Do you let anybody in your shop talk to legislators?

A Absolutely not.

[96] Q Why not?

A Because it's something that requires expertise judgment and something that somebody gets to do only after they've demonstrated that they have that ability to do that.

As I said, she was doing that only in the end. Most of her career with us had been, in a sense, more in the back room, developing programs, analyzing, and as she began to be better and better and began to be more involved with the legislation and demonstrated she could do it, we would have her contact, say, one legislator, a man who drafted a particular bill, and when it seemed she developed good relations there we went and put her into more.

Most of our people do not get out and do actual lobbying work directly.

Q How was her attendance at work?

A Excellent.

Q And how would you describe her energy and interest in her work?

A Very high. She was a very enthusiastic and hard worker. She worked long hours.

Q Was she somebody who worked on weekends?

A Yes.

Q And did you want her to stay on?

A Yes.

Q And why was that?

[97] A Because she was an extremely good employee, very productive and creative and energetic, and she did a lot for our organization and for our clients.

Q Did she enjoy her work?

A Yes.

MR. DOUGLAS: Your Honor, could I suggest a recess at this time?

THE COURT: Yes, sir.

Recess.

(Luncheon recess.)

AFTERNOON SESSION

[98] DIRECT EXAMINATION

BY MR. DOUGLAS (Continued):

Q Mr. Cogen, would you describe the quality of Nancy Feldman's work at your firm?

A You mean as to good, bad; the quality that way?

Q Yes.

A It was very good.

Q Are you familiar with the organization called the U.S. Conference of Mayors in Washington?

A Yes, I am.

Q And the National League of Cities?

A Yes, I am.

Q And what do they do?

A The U.S. Conference of Mayors and the National League of Cities represent the municipalities of the United States at the national level in a comparable way that the

Connecticut Conference of Mayors and Municipalities do in Connecticut. They are the policy development arm and the advocate before the legislative and administrative branches of the federal government for the cities and towns.

Q Now, Mr. Cogen, I want you to slow down just a little bit.

A I'm sorry.

Q Do you have a position with either of those organizations?

A Yes, I do.

Q What is that?

A I'm on the Board of Directors of the National League of Cities.

Q Now, would you have recommended Nancy Feldman for new position at the National League of Cities and U.S. Conference of Mayors in Washington, D.C.?

A Yes, I would have.

Q Would it have been a weak or a strong recommendation?

A It would have been a strong recommendation.

Q How did she compare with others in the field of legislation who were doing the same kind of work?

A Very favorably.

Q And assuming she had continued to work at your firm, what raises would she have received based on your past experience with her?

MR. MOLLER: Well, I'm going to object to that, your Honor. There's no evidence that she was going to continue with Mr. Cogen's firm.

THE COURT: Overruled.

A We do not have a pay classification system, but we do treat matters of comparability and also the quality of the

work. She could have expected to receive probably at least a thousand dollars and maybe substantially more each year. [100] As an analogy, a young lady who we hired to replace here was making the same amount of money when Nancy died, \$10,000, and by about a year later, reflecting also a cost of living factor, the salary was increased by \$3,500. So there would have been increases in the range of, I would say, one to three thousand dollars a year.

Q How would you describe Nancy Feldman in terms of energy; laziness, hard-working?

A Very hard-working, very industrious, very concerned to do a good job and to work very hard at it.

Q And was she interested or disinterested in her work?

A Very, very interested.

Q Are you familiar with the opportunities for legislative analysts in Washington, D.C.?

A Yes, I am.

Q And how did you become familiar with such opportunities?

A As the Executive Director of the Connecticut Conference of Mayors I worked very closely with the similar organizations in the other states, and particularly with the National League of Cities and the U.S. Conference of Mayors, which are our national affiliates and our representatives in Washington.

I worked very closely with their staffs in the development of and implementation of legislative programs on behalf of the cities and I know very well the work that they do.

Also in my capacity as a member of the Board of Directors of the National League of Cities I have an opportunity to review the work that's done by the staff of the organization.

Q Are the opportunities for legislative analysts and people working in that field in Washington, D.C. greater or less than in Connecticut?

A Much greater.

Q And why is that?

A Well, because there's a very heavy dominance of federal government in matters affecting intergovernmental relations and because there has been a greater willingness and tendency toward professionalization both within the legislature itself and with the organizations that deal with the legislature at the national level than there is at the state level.

It is reflected in the lobbying organizations in Washington just as it's reflected in the staff of the national Congress, which of course has much greater staff than we have, for example, here in Connecticut or any other state.

Q How does the salary level for legislative analysts in the two cities compare?

[102] A Much higher in Washington.

Q Would the fact that a person in the legislative field had not gone to law school prevent that person from being successful?

A No, it would not.

Q Would it add anything?

A Not having gone to law school?

Q No. If someone went to law school, would that add or not?

A Well, yes. Yes, having gone to law school, certainly. There are skills that you learn in law school that are invaluable in legislative work and in many other kinds of work.

But there are people who graduate from law school who don't do good work as legislative analysts and there are legislative analysts who have not gone to law school.

And so the skills certainly would be helpful. But I find in my experience that they are not essential.

Q Did Nancy Feldman intend to work in the field of legislative analysis?

A It was my understanding that she did, yes. It was my understanding that she was at least going to look for work in that field in Washington, and hoped to find it.

Q Is it a handicap to be a woman in this field?

A Absolutely not.

{103} Q Are you familiar with the position of legislative counsel in the National League of Cities and the U.S. Conference of Mayors?

A Yes, I am.

Q At the time of her death, in your opinion, was Nancy qualified for one of those positions?

A Yes, I believe she was.

Q At the lower or upper range of the salary levels?

A I would say at the lower range.

Q Now, by the way, did the Feldmans entertain you in their home?

A No.

Q And did you entertain them in yours?

A No.

Q So was the relationship a personal or professional one?

A It was professional. I mean, you know, I liked her, we were friends at the office, but it was an entirely professional relationship.

MR. DOUGLAS: That's all the Direct I have.

THE COURT: Cross-examination.

CROSS-EXAMINATION
BY MR. MOLLER:

Q Mr. Cogen, I understand that on June 7, the date of Nancy's death, she was on her way back to do some more [104] work for your organization?

A That's right, sir.

Q So did you consider her an employee on that date?

A Yes.

Q Did you pay her workmen's compensation claim for that death?

A I don't know.

Q You don't know whether one was made or not?

A I don't know.

Q Now, I think you indicated that she was coming back to do some work or to talk to some legislators?

A No. Well, she was coming back to work representing the Conference of Mayors in the last three days of the legislative session, only a part of which work would include talking to legislators. It would include analysis of amendments, proposed amendments, the reviewing of drafts, running financial projections of legislative proposals, alternative formulas and also talking with legislators; yes.

Q Can you recall the names of any of those legislators, Mr. Cogen?

A Yes, I do.

Q What are they?

A One happens to be in my mind very much because it was Representative Yedzniak from Hartford, who was —

Q Excuse me. Could you spell that for us, please?

[105] A Y-e-d-z-i-n-i-a-k.

And I remember that well partly because it's an unusual name and I had trouble learning it, just as you had trouble spelling it. And also because he was the author

and sponsor of a major piece of legislation on which Nancy did a great deal of work, which provided for state payments in lieu of taxes to cities and towns for state-owned property located in the cities and towns.

Q She wasn't at that time a registered lobbyist, I take it?

A No. Under the statutes of the State of Connecticut a representative or an agent of a municipality is not required to register as a lobbyist.

Q And how —

A It's an express exemption under the lobbying registration statute.

Q Of what municipality was she an agent?

A The Connecticut Conference of Mayors is an agent of the municipalities and she was an agent of — the Connecticut Conference of Mayors is, under the Internal Revenue Code, an instrumentality wholly owned by the municipalities which are its members and has a tax exemption as such, and she was therefore an agent of the municipalities that owned them. And I would be happy to name them, if you wanted. But there were some thirty member municipi-[106] palities and she was an agent for every one of them.

Q No. But I would like to know this: The thirty municipalities which belonged to the organization would not pay her directly, would they? In other words, the pay would go to Cogen, Holt & Associates?

A The pay went — the dues — they paid dues to the Connecticut Conference of Mayors, which in turn paid Cogen, Holt & Associates, which in turn employe Nancy Feldman as an employee.

I did not say she was an employee of the municipalities of the Conference of Mayors, but rather she was an agent of. And that is what the statute runs, to the question of agency.

Q I see. Now, in October of 1973, Mr. Cogen, was Philetus H. Holt a principal in your organization?

A Sir, what year was that?

Q 1973?

A Yes, he was. He was a partner in Cogen, Holt & Associates.

Q Right. And do you recognize that as the payroll -- let me show you the letter -- as the payroll records for Mrs. Feldman during her employment?

A Yes, I do.

No. A portion of her employment. Not during the entire period of employment. It begins here in March of [107] 1970 and runs through June of 1971. So it covered only a portion of her employment.

Q But the last —

A The last, yes.

MR. MOLLER: I think you have copies of this.

MR. DOUGLAS: Yes.

MR. MOLLER: Do you have any objection?

MR. DOUGLAS: No.

MR. MOLLER: May this be Defendant's Exhibit B, your Honor?

THE COURT: B.

Employment record or payroll record, is that what it is?

THE WITNESS: Payroll record.

MR. DOUGLAS: Your Honor, could counsel describe the pages that he's submitting?

MR. MOLLER: Yes, as soon as I get them back from the Clerk.

I am submitting I believe it is the one that starts July 3rd of 1970, starting with 144.24 and going up

through — excuse me. Let me amend that. It starts on March 6th of 1970 up through June 3rd of '71.

MR. DOUGLAS: Was that attached to another document which you showed the witness?

[108] MR. MOLLER: Yes, the letter.

MR. DOUGLAS: I think it would be wise to have the whole document introduced, your Honor, rather than selected parts of it.

I'm sure Mr. Moller doesn't have any objection to submitting the whole document.

MR. MOLLER: I have submitted the whole document.

THE COURT: That's a letter of transmittal, is it?

MR. MOLLER: Yes.

THE COURT: Is there anything significant about that?

MR. MOLLER: No. Just that this is how I got it. I don't see anything why I have to put my correspondence in.

THE COURT: I hardly regard that as a whole document situation.

MR. DOUGLAS: Well, I don't think it is the whole document, your Honor.

THE COURT: Well, this is a payroll record for the decedent from March 6th, 1970 to when?

MR. MOLLER: To June, 1971; the last year of her work.

THE COURT: The last month, right.

[109] MR. MOLLER: Through the last. One year next immediately prior to her death.

THE COURT: All right. Exhibit B.

(Defendant's Exhibit B: Payroll record of decedent, marked full exhibit.)

MR. MOLLER: And I just call to the Court's attention that on March 6th, 1970 her wages were \$125 a week. On May 29th, 1970, they went to \$144.24 a week, which continued until November 20th, 1970, when they increased to \$173.08 a week, which continued until May 28th, 1971 when her salary was increased to \$192.31 a week.

BY MR. MOLLER:

Q Mr. Cogen, also just with respect to Exhibit B and the 1971 figures, just for the Court's information I take it that starting at the top of the page, when the salary was \$173.08, the income tax deduction in this column was \$26.40, correct?

A \$20.70.

Q And then \$7?

A \$9 Social Security.

Q \$9?

A Yes.

Q So that actually in 1971 she was on her new salary for only two weeks?

[110] A Yes, that's right.

Q Have you ever worked in Washington, Mr. Cogen?

A You mean full time —

Q In any capacity?

A Well, yes, I've worked there, a week at a time or, you know, I go down and do work in Washington. But I've never had a principal place of business in Washington.

Q And I take it your firm has been in the consulting business since 1968?

A Yes.

Q And is your business primarily with municipalities?

A No.

Q It is not?

A No.

Q Is there any area in which you say you are?

A It's principally in areas that affect local and state government law and municipal law and administrative law and practice, and the relations between governmental organizations and the legislative affairs affecting them.

The second main substantive area is in the area of development work, physical development of real estate.

Q Since 1968 how many employees of yours have left your organization to go to work for an organization in Washington?

A Well, I can only think of one at the moment, but there [111] may have been — I mean not counting — you mean specifically left to expressly take a position in Washington?

Q Yes.

A One, only one that I can recall — not counting Nancy because she was going to Washington, but didn't have a job at the time she left.

Q And that would be how many employees since 1968?

A Who have left?

Q No. About how many employees would be a rough estimate of your total employees — you have thirty to thirty-five now — in the span of the six-year period from '68 to '74, approximately how many employees?

A Remember, that thirty to thirty-five includes secretaries and part-time. So out of the total number of employees, how many went? So we're saying out of the number we have now and always, even the number I gave you in the beginning, six, that included secretaries, bookkeepers and so on.

Q So it is just one out of a total --

A But no, I — you're saying how many have we had total during this time?

Q Yes.

A We don't have a very high turnover. I would say we've got, let's say, roughly thirty now. Maybe we've had a total of — also not counting short term people whom you [112] hire and then let go in two mo. 'hs because they didn't work out. We've had probably not more than fifty people in that time. We have a very high retention rate.

Q So one out of fifty is the only one you can recall ever going down to Washington to work?

A Plus Mrs. Feldman.

Q Well, where was she working in Washington[?]

A She was going to Washington. All right. Right. I can only recall one going down to Washington to work.

MR. MOLLER: Thank you.

MR. DOUGLAS: That's all I have.

THE COURT: You can step down, Mr. Cogen.
(Witness excused.)

MR. DOUGLAS: I call Kathryn Feidelson.

[113] KATHRYN FEIDELSON, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you please state your name for the Court.

THE WITNESS: Kathryn Feidelson.

THE CLERK: How do you spell your last name?

THE WITNESS: F-e-i-d-e-l-s-o-n.

THE CLERK: And your address?

THE WITNESS: 304 Ridgewood Avenue, Hamden.

DIRECT EXAMINATION
BY MR. DOUGLAS:

Q What is your position, Mrs. Feidelson?

A I'm a partner in the firm of Cogan, Holt & Associates,

and I'm Assistant Director of the Connecticut Conference of Mayors and Municipalities.

Q And what is your educational background?

A I have a BA from Vasaar College.

Q And what are your responsibilities?

A My responsibilities vary according to the nature of the clients of our particular firm. I have a major responsibility for certain clients, one of which is the Connecticut Conference of Mayors and Municipalities. I've had major responsibilities for other clients at varying points in time.

Q And how long have you been at Cogen, Holt?

[114] A Since its inception in 1968.

Q What was your starting salary?

A I started at —

Q You can put your notes up on the table, if you wish.

A Okay, fine. I started at roughly \$10,000; \$10,200.

Q When was that?

A That was in 1968.

Q And when did you become a partner?

A I became a partner in February of 1972.

Q And what is your present salary or partnership earnings?

A Well, the basic earnings would be \$25,000, plus a share of the profits, which vary of course from year to year. Last year that came to roughly \$5,000.

Q Did you work with Nancy Feldman during the period she was at Cogen, Holt?

A Yes, I worked very closely with her.

Q Throughout her time there?

A Yes.

Q I want to show you Exhibit 15 for Identification. This exhibit has been marked. I would like you to look at

the first page of that exhibit and tell me if that was prepared by you?

A Yes, it was.

Q When was it prepared?

[115] A About a week or so ago, last two weeks.

Q Is it accurate?

A Yes, it is.

Q And what are the attachments to that first page, which are also Plaintiff's Exhibit 15? I guess there are two pages.

Would your testimony both cover the first and second pages?

A Yes, it did.

Q What are the attachments to that?

A The attachments are examples of material which was prepared in whole or in substantial part by Nancy Feldman. There were various memoranda, statistical computations.

Q Do you recall projects on which you worked with Nancy Feldman?

A Yes, I recall a number of projects. I can give you illustrative examples, if you wish.

Q Would you give a few to the Court, please?

A She prepared various kinds of memoranda. One was a memorandum which was in regard to an evaluation of the administrative arrangements for employment programs. The assignment was to contact major municipalities in Connecticut and ascertain their experience with the Manpower programs being funded by the federal government and she prepared material which evaluated their experience and [116] made recommendations.

It was used as a basis for Joel Cogen, the Executive Director, to use at the National League of Cities.

Q Is there any part of her work that you still use today at Cogen, Holt?

A Yes. A good example of that would be a legal memorandum which she prepared which had to do with the school construction grant statute in Connecticut. There was some question as to the way in which the state Department of Education was implementing the statutes in connection with school construction grants. And she had prepared a memorandum on that interpretation.

And we used it a year or so ago when we were discussing with the state Board of Education this interpretation.

MR. DOUGLAS: Your Honor, I move the admission of Plaintiff's Exhibit 15.

MR. MOLLER: If your Honor please, I object to the first portion because Mrs. Feidelson has indicated she just made it out a week or so ago, I understood. And what purports to be a resume I think is clearly hearsay.

As far as the memorandum, I think the witness has already testified with respect to that and I would also claim that that has no real relevancy.

[117] MR. DOUGLAS: Your Honor, so far as the resume is concerned, unfortunately Nancy Hollander was killed in the Allegheny air crash, so there was no opportunity to bring her resume up to date. And this woman, Mrs. Feidelson, who worked with her, prepared this summary.

Most of the items here are already in evidence and this describes her work and her duties with Cogen, Holt, which is essential for the Court in determining —

THE COURT: Overruled. Full exhibit.

(Plaintiff's Exhibit 15 for identification: Received in evidence.)

BY MR. DOUGLAS:

Q What were Nancy Feldman's talents and capacities at work?

MR. MOLLER: Well, I'm going to object, your Honor. Mr. Douglas already stated it is set forth in Exhibit 15.

MR. DOUGLAS: Your Honor, I was trying to elicit from the witness what her view of Nancy Feldman's qualities were.

THE COURT: Overruled.

A Well, certainly they were intellectual skills and capacities, a remarkable degree of analytic ability, a skill in using numbers, statistical analysis. But apart from the [118] intellectual skills she had personal skills which made her able to deal with a wide variety of people, as well as administrative skills, a thorough commitment, a sense of responsibility, a talent for following up projects in which she was working. I would say those were her principal skills, qualities.

Q How was her attendance at work?

A Very good.

Q Did she enjoy her work, did it bore her or what, how did she approach her job?

A It was obvious that she enjoyed it very much. She was very committed and very enthusiastic.

Q Now, do you know what Nancy's career plans were?

A I had a discussion with her approximately ten days to a week before she was killed. I remember it rather clearly because we were riding up to Hartford together to work at the General Assembly and we discussed this subject specifically.

She indicated to me that she wanted to pursue a career, that she at the same time was interested in having a family and thought that she might take time out for that

family, but that she would always return to a job. She was for that reason rather interested in the way my career had gone because I, too, had had a family, had taken time out and had returned to work. So there were certain analogies.

And I recall the conversation quite clearly because [119] I referred to it, I know, in the condolence note I wrote to her family after her death.

Q Is it possible in the field of legislation and government regulations, such as you are engaged in, to take time out, if you are a woman, to get a family started and to still have a successful career?

A I think this is quite possible. And certainly one can work part-time and also one can take time out and still keep up with the field.

Q Has that been your experience?

A Yes.

Q What was your opinion of the quality of her work with the Conference of Mayors?

A I thought it was a very high quality. She was a good worker.

Q Did the mayors like her?

A As far as I know, they did.

Q How would you compare her with people of comparable experience, being completely candid and forthright in your answer?

A I would say she rated certainly with the top quarter. I think that I have tended to see people of extreme ability at the high point of the scale, so that when I say "top quarter" it's really the top quarter. She's certainly far better than the average person in terms of intellect and [120] ability.

Q Did she progress in terms of her ability and qualities while at your firm?

A Yes. In fact, I think that's something that's a very

positive aspect about her. It was clear when she began she was a beginner in some sense of the word, but she showed a capacity for growth and for change and for instruction, and responded well to supervision and to suggestions.

Q Would you have recommended her for another professional job in the field of legislative analysis?

A Yes, I certainly would have.

Q What kind of a recommendation would you have given?

A I would have given her a strong and very good recommendation.

Q Were you sorry when she left?

A Very sorry.

Q Were you a personal or professional friend of hers?

A I knew her on a professional basis. We would lunch together, something of that sort, but I never saw her socially.

CROSS-EXAMINATION

BY MR. MOLLER:

Q Mrs. Feidelson, even though Nancy were going to leave your organization — and apparently she knew this at least ten days before she left, is that correct?

In other words, you said you had a conversation with [121] her, she was going to Hartford about ten days before she left?

A Right.

Q But at any rate during that ten-day interval when you had that conversation and the time she left, she never did ask you for a recommendation, did she?

A I don't recall that she did. But she may have.

Q But you can't recall of ever writing one for her?

A I don't believe so.

Q And if you had written one for her, in all probability you would have retained it somewhere in your files, correct?

A Right.

Q And is that your file that you have in front of you there?

A No. They're just a couple of pieces of paper.

Q But have you used those to refresh your recollection to testify today?

A They only contain statistical information about Nancy's salary and about mine.

Q All right. So then you have used them to help testify today?

A Correct.

Q May I see them, please?

(Document handed to counsel.)

[122] Q (By Mr. Moller) I notice that actually after your first year of work your salary went down, is that right? In other words, you started at \$10,465 then it went down to \$10,200?

A In 1968 I worked for Cogen, Holt & Associates only for a part of the time. I had another income from another employer.

Q I see. So that actually when did you first become a partner then in Cogen and Holt?

A In 1972; in February, as I said.

Q Could you give us your salaries for the years from '68 on, please, Mrs. Feidelson?

A In 1969, which was the first full year, it was \$10,200. In 1970 it was \$15,000. In 1971, \$16,000. I had a raise midway to \$18,000.

In 1972 it was \$21,000. And in 1973, after I became a partner, it was roughly \$25,000, plus a portion of the earnings.

Q Now, prior to 1969, when you joined the firm, Mrs. Feidelson, I take it you had retired to raise your family?

A No. Prior to that time I had worked for the New Haven Redevelopment Agency.

Q I see. And then is that when Mr. Cogen was counsel?

A Yes.

Q What I'm trying to get at is you indicated in answer [123] to Mr. Douglas' questions that you had stopped your career somewhere along the way to have children. I just wanted to ask you about when that was.

A I had worked prior to having children, though not in a legislative analysis capacity.

He asked would it be possible, and I said I thought it would be.

Q Well, how many children do you have, Ma'am?

A I have three children.

Q And what are their ages?

A Their ages are twenty-six, twenty-one and nineteen.

Q When did you receive your Bachelor's degree?

A In 1947.

Q And then how long did you work before you —

A About a year.

Q One year. 1948?

A Yes.

Q Then when did you go back to work after '48?

A In 1962.

Q When?

A '62.

Q So then you took fourteen years off to raise your family?

A Yes.

Q And would you say that from 1962, then you began [124] to pursue your career until you are now a partner in this consulting firm?

A Right.

MR. MOLLER: Thank you very much, Mrs. Feidelson.

MR. DOUGLAS: No Redirect.

THE COURT: You may step down.

(Witness excused.)

MR. DOUGLAS: I call Mr. Steven Bourke.

[125] STEVEN BOURKE, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your name for the Court.

THE WITNESS: Steven Bourke; S-t-e-v-e-n, B-o-u-r-k-e.

THE CLERK: And your address, Mr. Bourke?

THE WITNESS: 521 Albany Avenue, Takoma Park, Maryland.

DIRECT EXAMINATION

BY MR. DOUGLAS:

Q Mr. Bourke, by whom are you presently employed?

A I work for the House of Representatives, the Democratic Steering and Policy Committee for which I'm Assistant Director.

Q And to whom do you report in that capacity?

A The Speaker of the House; Carl Albert.

Q Where did you go to college?

A I went to Yale University.

Q What degree did you get?

A A Bachelor of Arts in English.

Q Have you been to Graduate School?

A No, I have not.

Q What did you major in in college?

[126] A English.

Q How old are you now?

A I'm twenty-eight.

Q Did you ever work with Nancy Feldman?

A Yes, I did.

Q Where was that?

A At Cogen, Holt & Associates in New Haven.

Q When did you join them?

A In the late summer or early fall of 1968, shortly after the firm began.

Q And when did you leave?

A In the spring or summer — I believe mid summer of 1971, approximately three years after I had joined the firm.

Q Do you recall what your starting salary was?

A When I began work at Cogen, Holt & Associates I was paid \$6,000 a year at that rate.

Q And what was your salary when you left?

A \$13,500 a year.

THE COURT: That was three years later?

THE WITNESS: It was a little less than three years; perhaps two years and nine months, two years and ten months. I believe.

BY MR. DOUGLAS:

Q What did you do at Cogen, Holt?

A I was an associate of the firm.

[127] Q And what kind of work did you do at the firm?

A Largely legislative analysis. I worked for a number

of clients, all of whom had different needs, and of course what I did would be in response to the client's particular needs.

I spent perhaps half my time working for the Connecticut Conference of Mayors, for whom I did a substantial amount of researching and writing legislation, especially in the area of collective bargaining or block grants from the state to municipalities.

And I worked for other clients as well, for whom I also did legislative work. I did state income tax work for the State Labor Council and a number of other kinds of work.

Q Do you recall any projects on which you and Nancy worked together?

A Yes, I can.

I wasn't in a supervisory or subordinate role with Nancy, so our work tended to be coordinate and we often helped each other out in projects where one of us knew something and the other didn't.

I worked, for example, on a project involving state reimbursement of municipalities for tax exempt properties, such as hospitals or universities. Preparing legislation — excuse me.

[128] Q Did you share an office with her?

A Yes, at various times I did.

Q How well did you know her work?

A At work?

Q How well did you know her work?

A Well, I saw it periodically. As I said, I was not in a supervisory role with her, but I did see it. She showed me things after she completed working on them and I guess I knew it fairly well.

Q What did you think of her abilities and talents at work?

A I'd say she was very capable. When I would work with her on something she'd perhaps ask a question of where to find something if I knew that area better than she did. And I would only say it once and she'd go right to that sort of thing.

Q How would you describe her talents and abilities at work?

A A very capable, bright person. Of the people that I've worked with — and I've been working now for, I guess, six years — she's certainly among the very top that I've worked with.

Q How about her capacity to work with others?

A I enjoyed working with her. I thought she was a very fine person.

[129] Q How was her attendance at work?

A Regular. Fine.

Q What was her plans for career and family?

A She intended to work for a while after leaving New Haven and take some time out, probably not very many years. I remember some discussions I had with her about that and she really wanted a career and intended very much to have one and to spend a lot — you know, most of her life at it.

Q After you left Cogen, Holt in the summer of '71, where did you go next?

A I went to Washington, D.C.

Q Now, Mr. Bourke, how did Nancy Feldman's qualifications for work in the legislative field compare with your own?

A I'd say they were virtually the same.

Q How did she and you compare so far as experience is concerned, as of July of '71?

A We had been working, I guess, about the same amount of time. Not in the same places. I worked for Cogen, Holt.

Q Didn't you have more experience than she, though?

A I can't answer that for sure. I think that we both had gotten out of school in the same year and begun working. I think we had the same number of years' experience, yes.

Q What kind of a job did you look for in Washington?
[130] A I looked for a job working in the area of legislative analysis and preparing bills, legislation.

Q Did you have any trouble getting it?

A No, I'd had excellent background and excellent training for that sort of work.

Q Where did you get that background and training?

A Working for Cogen, Holt.

Q What was your first job in Washington?

A On the staff of the Committee on Public Works in the House of Representatives.

Q And what did you do there?

A I worked on economic development legislation, preparing legislation for the Chairman of the Committee, John Blotnik.

Q Did it involve working on legislative analysis?

A Certainly. That was the essence of the job.

Q And how much did that first job pay?

MR. MOLLER: Well, I'm going to object, your Honor.

I don't think we have comparables here at this point. The first comparable is that when he left Cogen and Holt Mr. Bourke was earning \$13,500. Mrs. Feldman was earning \$10,000.

And with all due deference to my provinciality, I think a Yale degree would get a person a much finer job than a University of Pennsylvania degree. So I [131] don't think we have comparables.

MR. DOUGLAS: Your Honor, if I may, I think they are very closely identical because they both worked for the same firm, they both had only had undergraduate education, they both had roughly the same experience. According to Mr. Bourke, their qualities were about the same. In addition, both had happened to major in the same subject in college, English literature, which is shown by his testimony and one of the exhibits that's been received in evidence.

So I don't know how we could find a more parallel situation. Indeed, he was looking for a job in July of '71, or in the summer of '71, about the time that Nancy was moving to Washington and would have been looking for work if it hadn't been for the crash.

THE COURT: Overruled.

BY MR. DOUGLAS:

Q How much did your first job pay?

A In Washington?

Q Yes, sir.

A \$17,500 annually.

Q And does your present job involve legislative analysis?

[132] A Yes, it does.

Q When did you move to it?

A In the fall of 1973.

Q And what does it pay?

A It pays \$30,000 annually.

MR. MOLLER: Same objection, your Honor.

THE COURT: Overruled.

MR. DOUGLAS: Mr. Reporter, did you get the answer?

(Answer read back.)

THE COURT: For what?

THE WITNESS: For my present job.

THE COURT: What do you do that pays you \$30,000 a year from the government?

You are a Legislative Analyst working for Carl Albert, is that it?

THE WITNESS: There are two people who handle national legislation for the Speaker of the House, and I'm one of them.

BY MR. DOUGLAS:

Q Could you expand on your job, your responsibilities now, Mr. Bourke, for the Court?

A Reporting to the Speaker of the House on the status of particular pieces of legislation, serving as a sounding board for committee members who have problems, bringing [133] them to the Speaker if they are of use to him or if he can help solve the particular problem.

THE COURT: You are paid \$30,000 to let him know what's going on, is that it? In the legislature?

THE WITNESS: In a very real sense, yes.

He has many decisions to make that he needs all the information on.

THE COURT: It's a great field, I must admit.

BY MR. DOUGLAS:

Q Is that Committee of recent innovation?

A The Steering and Policy Committee? No. I'm the Assistant Director of the Steering and Policy Committee and that committee has been in existence for about ten years.

Its current work, that is policy work as well as serving as a steering committee for the Democratic Party in the

House, has probably originated within the last two years. The members of the Committee are the senior Democrats in the House of Representatives and they establish policy for the party in the House.

Q Are you familiar in the ways in which congressional offices are staffed?

A Yes, I am.

Q And do you know how many professional staff positions there are on Capitol Hill?

[134] A Approximately, yes.

Q How many?

A I would guess that there are about four or five thousand.

Q Is that number expanding or contracting?

A Expanding.

THE COURT: And these are largely for the same purpose, to let the legislators know what's happening, to know what legislation there is and what it is designed to accomplish and how it's working out?

THE WITNESS: Well, my job is a little different from a job in a congressman's office where you are more likely to be working with bills affecting a particular district.

THE COURT: Yes.

But it's in the same purpose?

THE WITNESS: Ultimately, yes.

THE COURT: Yes.

BY MR. DOUGLAS:

Q Well, are those staffs engaged in drafting legislation?

A Yes.

Q Are there opportunities in this work for college

graduates who are not lawyers, who don't have graduate degrees?

[135] A Yes.

THE COURT: Couldn't all this be put on tape some way so that all you would have to do is to go to a computer and find out what is happening and find out where the legislation is, what problems are being dealt with?

Is it every new thing that comes up in Congress requires a legislative analyst to make a search to see what has been enacted into law dealing with the subject?

THE WITNESS: I'd say that that more and more is true, and also it requires people to write the actual legislation, to research problems and write a bill that is going to respond to the actual problem.

It's pretty tricky business.

MR. DOUGLAS: Your Honor, with all deference, I would suggest on perhaps an extraneous aside that one of the problems that we've seen in the last few years has been the inability of Congress to come to grips with the Executive Branch and they have not been staffed adequately and they've have to expand the staff in order to hold their own with the Executive Branch.

And we are seeing some of that, I suggest, today in [136] some of the things that have happened over the past few years.

THE COURT: Well, we don't always get an opportunity to get an inside view of what's going on.

I mean it just happens in this case that that opportunity is dished up to us.

MR. DOUGLAS: I appreciate that, your Honor.

THE COURT: So I hope my little curious inquiries don't dull my perspective on the case.

MR. DOUGLAS: I'm sure it's entirely appropriate, your Honor.

THE COURT: All right.

BY MR. DOUGLAS:

Q Now, you've been around Capitol Hill for almost three years. Looking back to '71, if Nancy Feldman had tried to get a job like yours at that time on Capitol Hill could she have done so?

MR. MOLLER: I'm going to object to that, your Honor. It is purely conjecture and there is no indication at all that any other individual than Mr. Bourke has had this experience or has had this result.

He said there are only two members of the Committee, himself and another man.

[137] THE COURT: I'll allow it for what it's worth. He seems to have his ear close to the ground and knows what's going on down there.

MR. MOLLER: I'm glad someone does.

THE COURT: I take it this job you've got is about the best in this field that a young person in this field could obtain, right?

MR. DOUGLAS: Your Honor —

THE COURT: Well, can I have an answer to the question?

MR. DOUGLAS: Yes.

THE WITNESS: Yes, it is very nearly the best.

THE COURT: Yes.

MR. DOUGLAS: Your Honor, I wasn't suggesting and I didn't mean to imply by my question that I was asking Mr. Bourke if Nancy Feldman could have gotten the job which he has now.

~ My only question was could she have gotten a job on Capitol Hill in legislative matters in 1971. I don't want to overstate —

THE COURT: I understand.

Well, I was just trying to make an estimate of the witness' qualifications to give an answer, just see how much expertise he has in the field.

Apparently the position he has reached indicates he [138] knows his way around, as far as getting the top job is concerned.

THE WITNESS: I take that as a compliment.

THE COURT: What's that?

THE WITNESS: I take that as a compliment.

THE COURT: Well, I think you are entitled to it.

BY MR. DOUGLAS:

Q Did you see Nancy Feldman and Reid Feldman outside of the office when you were in New Haven?

A Yes, I did.

Q What kind of a person was she and what did she enjoy doing?

A She was a very warm and outgoing person. I liked her a great deal.

She enjoyed a lot of things. She bicycled to the office every morning and would come in happy and cheerful. And she played tennis a lot, I know, in the evenings. She had me over to dinner on several occasions and enjoyed entertaining people, enjoyed having people at home. She was a very friendly and warm person.

MR. DOUGLAS: That completes the Direct, your Honor.

THE COURT: Let me ask another question.

MR. MOLLER: Ask all you'd like, your Honor.

[139] BY THE COURT:

Q So you've got the top job, or one of the top jobs in this area; right?

A Yes.

Q So to go further, as far as economic reward is concerned, you'd have to shift over to another field or go into business for yourself, like Mr. Cogen has done?

A I would stay in the same field probably, but would move into private business rather than government.

Q Yes, that's what I say. You would have to go into business for yourself?

A But the essence of the question, I think, is not what I'm doing now, but rather what I faced in 1971 and what kind of prospects I found and what kinds of job were open.

THE COURT: I'm just looking at the upper limits of this particular career field.

Okay.

CROSS-EXAMINATION

BY MR. MOLLER:

Q When were you graduated from Yale, Mr. Bourke?

A 1968.

Q And with honors?

A Yes. With honors in my department.

Q Do you know whether or not Mrs. Feldman had been graduated with honors?

[140] A I don't. Honors systems in college vary a great deal. I graduated with less than a B average and yet had honors.

Q In English?

A Yes.

Q Is your father in legislative type of work?

A No, he was not.

Q What was it that sort of got you into the field?

A An interest in governmental affairs, in legislation.

Q Now, are you single or married, Mr. Bourke?

A I'm single.

Q And Takoma Park, Maryland is where, with relation to Bethesda or Washington, D.C.?

A It is just across the northeast line of the district in Maryland.

Q In Maryland. So is that before you get to Chevy Chase?

A Chevy Chase is on the northwest side of the district. They bear a rather distant relationship to one another. This is a lower middle class neighborhood, quite different from Chevy Chase.

Q I see. About how much would you say, you would estimate it takes you to support yourself alone in that area at this time?

[141] MR. DOUGLAS: Your Honor, I object. It is outside the scope of the Direct examination.

We didn't ask Mr. Bourke anything about living expenses or being able to support himself. I'm sure that Mr. Moller can call his own witnesses for that purpose.

THE COURT: Are you going to have some?

MR. MOLLER: Oh, yes. But I think it's proper.

THE COURT: Tomorrow?

MR. MOLLER: Yes.

But I think it's proper Cross-Examination.

Mr. Douglas opened the door by asking what he's making annually, and I think concomitant with that and what he is making annually is what it costs him to support himself annually.

THE COURT: I will sustain the objection.

BY MR. MOLLER:

Q In order to go from the \$17,500 job, Mr. Bourke, to your present job, how many steps did you take in between?

A I started in the fall of 1971 at \$17,500. I then shifted with the standard government salary increase, I believe it was 5 per cent. I must have moved up another 5 or 5 $\frac{1}{4}$ per cent, whatever the number was.

I then had a second step, a second similar increase I think about a year later; which must have taken me to [142] very close to \$19,500 or \$20,000.

I then moved into the Office of the Chairman of the Public Works Committee as his Legislative Assistant with the understanding that if I stayed on I would be paid \$34,000 a year, which was the median salary of the staff of the Public Works Committee on which I was currently working for him.

Q What was the median salary, sir?

A The median salary of the professional staff was \$34,000, I believe.

Q Could I just interrupt you there.

How many women twenty-eight years of age were on the professional staff in 1973 earning \$34,000?

A I can't answer that question.

Q All right. Did you know of any?

A No.

Q Excuse me. Then —

A I don't know that there were any, I don't know that there weren't any.

Q What would be your next step then after that?

A I was still at \$20,000 a year. I hadn't taken the \$34,000. I moved into the job that I'm currently in last fall at \$30,000.

Q Of the four to five thousand employees that you esti-

mated for Mr. Douglas in Washington, do you know of any [143] twenty-eight year old girl who is earning more than \$14,000 a year at this time?

A Can I have a few minutes to think about that?

Q Surely. Go ahead.

A I know a lot of twenty-eight year old girls.
Yes, I believe I do.

Q And in what capacity is she working, and at what salary range?

A Well, she's a Legislative Assistant.

The structure of the congressmen's office generally is he has an Administrative Assistant who is paid something in the neighborhood of \$30,000. Then he'll have a couple of Legislative Assistants.

In the case of a Senator, probably many Legislative Assistants. And those jobs — well, in 1971, when I went down, I was offered a job working for a congressman as a legislative assistant and there are many women in such jobs, and most of them are young, at I think \$15,500.

Q Fifteen, five?

A Which I did not accept. Which I took a Committee job, which is a more professional job.

Q But, at any rate, the girl that you had in mind as a legislative assistant, who could be about twenty-eight years of age, would be making about fifteen, five?

A As a beginner.

[144] Q Yes.

A Now the one I'm thinking of is by no means a beginner. I'm sure she's earning more than that.

Q And perhaps this may seem foolish to you, but being up here in the country, where is all this legislation?

A I don't understand your question.

Q Well, I mean there seems to be an awful lot of work

in legislation, but from my standpoint none of the legislation seems to get either out or working. So where is it all?

A I would guess that a great deal of the legislation is out and working, and you're not aware of it.

MR. MOLLER: I see. All right.

Thank you, Mr. Bourke.

REDIRECT EXAMINATION

BY MR. DOUGLAS:

Q I have one question, Mr. Bourke. When you went to Washington were you offered a job at the National League of Cities, U.S. Conference of Mayors?

A Yes, I was.

Q What position?

A As Legislative Counsel.

Q And what was the salary offered?

A The salary offered was about \$20,000 a year, which was standard for the job.

[145] Q Did you turn it down?

A Yes, I did.

MR. DOUGLAS: That's all I have.

MR. MOLLER: I have nothing further.

Thank you, Mr. Bourke.

MR. DOUGLAS: Your Honor, could I suggest a recess, please?

THE COURT: You can step down, Mr. Bourke.
(Witness excused.)

* * * * *

[158] CLARENCE HEIMANN, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Please state your name for the Court.

THE WITNESS: Clarence F. Heimann.

THE CLERK: How do you spell your last name?

THE WITNESS: H-e-i-m-a-n-n.

THE CLERK: And your address, Mr. Heimann?

THE WITNESS: 16 Vista Place in Trumbull, Connecticut.

DIRECT EXAMINATION

BY MR. DOUGLAS:

Q What is your occupation, Mr. Heimann?

A I am Director of Project Development for the Connecticut Resources Recovery Authority.

THE COURT: You will have to keep your voice up, Mr. Heimann.

THE WITNESS: I beg your pardon?

THE COURT: You will have to keep your voice up, to save repeating things.

THE WITNESS: All right.

Q (By Mr. Douglas) Are your offices in Hartford?

A My occupation is in Hartford, yes.

Q How long have you held that job?

[159] A Since the 15th of February.

Q Of this year?

A Of this year.

Q Were you at any time a mayor or selectman of a Connecticut city?

A I was the First Selectman of the Town of Trumbull for twelve years.

Q What years were they?

A From 1961 to 1973.

Q Are you familiar with the Connecticut Conference of Mayors?

A Yes. I was the president of the organization for two years.

Q What years were those?

A 1971 and 1972.

Q And what do they do?

A I didn't hear you, sir.

Q What do they do?

A The Connecticut Conference of Mayors was an association of chief executives of the State of Connecticut of communities, at that time of populations over 20,000.

The purpose of the organization was to further the interests of individual communities in its dealings with the state legislature, with the developed programs of interest to the communities and assist them in their efforts at both [160] the state and federal levels, to develop programs and seminars that would be helpful to them in the conduct of their offices.

Q When you were head of the Connecticut Conference did you do any work with Joel Cogen Associates?

A Joel Cogen Associates were retained by the Conference from the organization up until the present time as the Executive Directors of the Conference.

Q How did you regard the quality of their work?

A I considered it to be very excellent.

Q And while you were with the Connecticut Conference of Mayors did you become acquainted with Nancy Feldman?

A Yes, I did.

Q Did you deal with her directly?

A In many circumstances, yes.

Q When did you first get to know her at Cogen, Holt Associates?

A Would you repeat that question, please?

Q When did you first get to know her in her job?

A Probably when I was vice-president in 1970. As vice-president I was Chairman of the Legislative Committee and this is the first period of time we started to deal with Nancy.

Q What kinds of things did she do that you are familiar with?

[161] A Well, our research activities in the development of legislation, pulling together conferences of the individual mayors and our committee functions; presenting information to us that would be helpful in our thinking.

She also acted within the halls of the House in meeting with legislators at the State Legislature.

Q Did you work with her until the time of her death?

A Yes.

Q What was the quality of her work?

A Well, I was very much impressed with Nancy's abilities.

Q How would you describe those?

A Well, I think I would describe her as being an attractive and intelligent and articulate person; someone who had the ability to order her thoughts and to be able to present them in a fashion that people could readily understand. She had a unique ability, in my opinion, in this area.

As a relatively young person she seemed far more mature than her age in her ability to engender thinking and to encourage participation by people who were, in many cases, her superior in age and perhaps station in life.

Q In your view, based on your knowledge of her, what kind of a future did she have in the field of legislative analysis?

A I would think it would be a very fine future.

[162] Q Would you have recommended her for a job in this field?

A I would have employed her any time she wanted to leave Cogen, Holt.

Q Pardon me?

A I would have employed her at any time that she wanted to leave Cogen, Holt.

MR. DOUGLAS: That's all I have.

THE COURT: Employ her to do what?

THE WITNESS: In my facility or in my function as the chief executive of the Town of Trumbull, as an assistant in our operations.

MR. DOUGLAS: That's all I have, your Honor.

CROSS-EXAMINATION

BY MR. MOLLER:

Q Mr. Heimann, how much would she have made in that function?

A I beg your pardon?

Q What would her salary have been in that function?

A If I had employed her?

Q Yes.

A Well, at that point in time probably in the neighborhood of nine or ten thousand dollars a year.

Q Nine or ten thousand a year.

And you never did have the opportunity of writing [163] a letter of recommendation for her?

A No, I did not.

MR. MOLLER: Thank you, Mr. Heimann.

THE COURT: You may step down, Mr. Heimann.
(Witness excused.)

MR. DOUGLAS: I call Mr. Malasky.

[164] ARNOLD MALASKY, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you please state your name for the Court.

THE WITNESS: Arnold M. Malasky, M-a-I-a-s-k-y.

THE CLERK: And your address, Mr. Malasky?

THE WITNESS: 268 River Drive, River Vale, New Jersey.

DIRECT EXAMINATION

BY MR. DOUGLAS:

Q Mr. Malasky, what is your position?

A I am a consulting actuary with the firm of Kwasha Lipton.

Q How do you spell that?

A K-w-a-s-h-a, L-i-p-t-o-n.

THE COURT: Kwasha? What's his first name?

THE WITNESS: First name? Chic.

THE COURT: Well, that's what we called him. But years ago, thirty years ago, maybe. What is the name of it?

THE WITNESS: Kwasha Lipton.

Do you know him?

MR. DOUGLAS: Just a minute, Mr. Witness. You don't address the Court.

[165] THE WITNESS: Excuse me.

THE COURT: Kwasha Lipman?

THE WITNESS: Lipton, L-i-p-t-o-n-, Inc.

THE COURT: And you call yourself a consulting —

THE WITNESS: Actuary.

THE COURT: Consulting actuary.

Q (By Mr. Douglas) Mr. Malasky, how long have you held that job?

A Three years.

Q And prior to that time what did you do?

A I was an actuary with Metropolitan Life Insurance Company in New York.

Q For how long?

A Nine years.

Q What was your position with them?

A When I left I was an actuarial associate. And during the time I was there I worked in the Actuarial Department of Metropolitan Life.

Q What degrees do you have?

A I have a Bachelor of Arts from Cornell University with a major in mathematics.

Q Have you been in the actuary field since you got out of college?

A Yes.

Q When was that?

[166] A 1962.

Q What professional organizations do you belong to?

A I am a Fellow of the Society of Actuaries; a member of the American Academy of Actuaries; and a member of the International Actuarial Association.

Q And how do you become a member of those organizations?

A Well, to become a Fellow of the Society of Actuaries you have to pass a series of ten examinations, which covers all phases of life insurance, health insurance, pension business, including calculations involving interest rates and life contingencies, economics, investments, study of future interest rates; a lot of other items.

The American Academy of Actuaries accepts similar examinations, basically the same ones, and also substantial work experience in the actuarial field.

Q What kinds of projects do you work on in your present assignment?

A I work as consultant generally to corporations in the field of employee benefits; pension plans, group life insurance plans, medical plans, disability plans, where we would do actuarial valuations determining the present value of future costs, determining the cost of making various changes in plans, developing costs on a lot of different bases for different types of programs, work in union negotiations [167] if costs are needed there.

Q And what did you work on at Metropolitan?

A There was a variety of work in the actuarial field, including development of Metropolitan Life's dividend formula for group insurance programs, development of interest rates that were used in various calculations, analysis of investment experience, work on the Annual Statement.

Q In those jobs have you worked with inflationary rates?

A Yes; both currently and also at Metropolitan Life.

THE COURT: What was the question?

MR. DOUGLAS: In rates of inflation, your Honor.

Q And have you worked with estimating lifetime future earnings for individuals?

A Yes. Quite often that will be used as a basis for determining future costs for pension plans and other types of benefit programs.

Q Is that true in one job or the other job, or both jobs that you've had?

A It was true in both. More so currently. Most of my work at Kwasha Lipton has involved this type of calculation.

Q Does that involve, in some instances, efforts to reduce future earnings to present values?

[168] A Yes. Generally all the time. It would really be determining the present value of future earnings.

We would rarely work with total future earnings without discounting it.

Q What is the normal retirement age in this country?

A Sixty-five.

Q And why is that?

A It's developed primarily, I believe, because of the Social Security system and the fact that Social Security picked age sixty-five almost forty years ago.

Q Now, were you in the courtroom when I read the stipulation of the parties that Nancy Feldman was in good health at the time of her death and twenty-five years of age at that time?

A I was.

Q Were you in the courtroom when I read the stipulation of the parties that a white female of twenty-five years of age would be expected to live fifty-two additional years?

A I was.

Q Were you here when Mr. Feldman testified that his wife planned to take four to eight years out for the birth and raising of the two children or so which she hoped to have?

A I was.

Q And were you here when Mr. Cogen testified that Nancy Feldman's salary had started at \$6,500 in 1969 and [169] had increased to \$10,000 at the time of her death?

A Yes, I was.

Q Have you read the deposition of Mrs. Dorothy Rodmann, which I think is Exhibit 17, wherein she testified that in July of 1971 Nancy Feldman was qualified to start

at the U.S. Conference of Mayors, National League of Cities in Washington, D.C. as a legislative research assistant at the rate of a GS-10 salary of \$11,500?

A Yes, I did.

Q Have you looked at the 1971 salary scale attached to Mrs. Rodmann's deposition?

A Yes, I have.

Q I want to show you Exhibit 16, which has not been received in evidence, and ask you if that is the same document which was attached to Mrs. Rodmann's deposition?

A That appears to be the same numbers.

MR. DOUGLAS: Your Honor, for the convenience of the Court I think I will be referring to this Exhibit 16, since it is in the exhibit book, and I therefore would move its admission at this time.

THE COURT: 16?

MR. DOUGLAS: I think I'm correct in saying it's identical to what was attached to Mrs. Rodmann's deposition as Exhibit R-3 which was received in whole yesterday.

[170] THE COURT: Mark it a full exhibit. Strike the identification.

(Plaintiff's Exhibit 16 for identification: Received in evidence.)

BY MR. DOUGLAS:

Q Did you read Mrs. Rodmann's deposition wherein she testified that in her organization people can move from one GS rating to a higher one without losing salaries?

A Yes, I did.

Q And that annual increases are given for satisfactory performance?

A Yes.

Q And do you recall in general terms what those annual increases were?

A Roughly they were on the order of between 500 and up to a thousand dollars at the, at least, GS-14 level when they were in the salary range of about \$25,000. It was roughly about 3 or 4 per cent.

Q We are talking now about a 1971 salary schedule, aren't we?

A Yes.

Q And your testimony is confined to that, is it not?

A Yes, it is.

Q When you said the increases were from 500 to a thousand — was that your testimony?

[171]A Yes.

Q On an annual basis.

Did you read the testimony of Mrs. Rodmann that there are a substantial number of jobs in the field of legislative analysis in Washington for non lawyers?

A Yes, I did.

Q Excuse me. In government and non government employment and that such opportunities are increasing?

A Yes.

Q And were you in the courtroom when Mr. Cogen testified that Nancy Feldman was an outstanding individual in the field of legislative analysis?

A Yes, I was.

Q And were you here when he testified that had Nancy Feldman remained with his firm he would have raised her salary at least a thousand dollars per year?

A Yes, I was.

Q I don't think he testified to that indefinitely, but for —

A I believe it was for a period of five years, if I remember right.

Q Have you estimated Nancy Feldman's gross earnings? You can answer the question yes or no and we can go on from there.

A Yes, I have.

[172] Q And how many years did you assume she would work?

MR. MOLLER: At this point I object, your Honor.

I feel that this is not a matter of expert testimony and I rely on the observations of the Second Circuit Court made when your Honor permitted an expert to testify in the Perry case.

The Second Circuit Court indicated that, "The use of an expert economist's testimony is permissible in a trial judge's discretion".

Now, I object to Mr. Malasky's testifying on several grounds. First, I don't think he has the qualifications to testify in this area. He is not an expert economist. He is an actuary and as an actuary is primarily concerned with the determination of the costs of insurance in the future, the costs of supplying health benefits in the future, and it does not meet the qualifications, certainly, of Dr. Martin in the Perry case.

Secondly, I think this trespasses upon your Honor's province because, as your Honor pointed out in his Charge in the Perry case on Page 8 and following, that it is a law of the State of Connecticut that as far as the loss of earning capacity is concerned there is no mathematical formula which can be presented or adduced.

[173] It is a question of fact for the trier of facts to ascertain.

Now, I think your Honor has before him all of the necessary elements to make a determination because of the variables involved. The first variable is how long Mrs. Feldman would, in fact, have worked. The second is if she had worked, at what salary range. The third is after she had her children, whether it was reasonably

probable, she being married to what I'm certain will be a successful lawyer, whether she would go back to work.

I feel since this is being tried to the Court, that any opinion of Mr. Malasky, as far as what he feels from his own personal standpoint the loss of earning capacity is, should not be permitted because it is not a situation as in the Perry case where you have jurors hearing a death case for the first time. Instead, we have a veteran jurist who has handled many of these matters and I think that your Honor's discretion should be exercised at this point to disallow or not admit this evidence.

I think primarily on the fact that your Honor has the best evidence before him. The Connecticut rule under Floyd vs. the Fruit Industries states you cannot [174] apply a mathematical formula and having in Exhibit B Mrs. Feldman's actual earnings for the last year of her life, together with her income tax deductions and at least her husband's estimate of what it cost for her to live and continue life's activities, that is sufficient at that time and that this evidence is, one, not admissible because of a lack of proper expertise; and, two, that it is a trespass upon the function of the Court.

THE COURT: As to the first ground, I hold that Mr. Malasky is qualified to express an opinion with respect to matters within his field of professional activity as an actuary and within his field as preparing pension plans and other employee benefit programs to take effect in the future, to express an opinion.

Now, as far as the relevance of any opinion he might have in this case is concerned, I think it may be of some assistance to the Court. At least I do not decide at this time as a matter of discretion that I ought to pay no attention at all to what his opinion is.

I may not follow it. I may find that in several respects it doesn't accord with my own criteria of what

is appropriate or my own estimate of what is likely to happen.

[175] But I think it may well be helpful. So I will overrule the objection.

MR. MOLLER: Very well.

Just for the record I call your Honor's attention to the fact that in its decision the Second Circuit Court still referred to Allendorf in Illinois, which case specifically stated that the expert, if he was to give his opinion, should use merely starting with Dollar 1 amount rather than using any actual oscillated figures; such as taking Mrs. Feldman's earnings at \$10,000 or \$15,500, in order that the expert give merely an actuarial basis of how a determination should be made.

THE COURT: Well, I assume that at least will be part of what he has to say.

MR. MOLLER: Just for the record, I would further object if he is going to use dollar amounts other than a nominal dollar amount to explain the methodology that he arrived at or he would suggest to this Court in determining a way to determine (1) loss of earning capacity and (2) reduction to present value.

THE COURT: Overruled.

MR. MOLLER: May I inquire through your Honor of Mr. Douglas whether or not Mr. Malasky has a written report which we could follow?

MR. DOUGLAS: No, we don't.

We've had the same problems you had, Mr. Moller, with your expert.

MR. MOLLER: Fine. Thank you.

THE COURT: All right. There is a question pending, I guess.

(Question read back.)

A Thirty-two years.

Q (By Mr. Douglas) And how did you arrive at that figure?

A Based on the stipulation that a white female in good health aged twenty-five would live an additional thirty-two* years, which would bring her to age seventy-seven; and on the typical normal retirement age of sixty-five, I presumed that she would work until age sixty-five.

On the evidence given by Mr. Feldman that she had planned to take time off to have possibly two children and would be out from four to eight years, would not be working full time from four to eight years, I assumed the higher figure of eight years as a conservative estimate of the number of years that she would be out; deducted that from the forty years remaining to age six y-five and came up with thirty-two.

Q Now, then what salary levels did you use; what did [177] you start out with?

A I started out with, as a basis, the salary given in the testimony of Mrs. Rodmann that she would be qualified for the lowest salary on GS-10 as an initial salary, which was \$11,517 per year. And I think that answers the question.

Q And then what did you assume would be her increases?

A Her increases were projected in accordance with the salary scale attached to Mrs. Rodmann's deposition.

THE COURT: That's GS-10?

THE WITNESS: Well, the method I used in accordance with Mrs. Rodmann's testimony was that if there were satisfactory performance an individual would go to the next salary in that grade and that —

Q (By Mr. Douglas) Is that called a step?

A I believe it's called a step, yes. The next step. I think there are ten steps in a grade.

However, the grades overlap in that the lowest salary in GS-11 is below, like, the sixth or seventh salary in GS-10.

* This must be a reporter's error. The correct figure is fifty-two years.

And here I assumed that she would move up to the next grade, based on the testimony that individuals do move up to the next grade without loss of salary. So when she reached a salary just below the lowest salary in the next level, I moved her or assumed that she would move up to the [178] next grade.

Q How often did those increases occur under your assumptions?

A The salary increases were annual.

Q Now, this is based on 1971 schedules, is that correct?

A Yes. The increases that I have, I guess, ranged from the lowest on the order of about —

Q No. Could you answer my question?

A Okay. Sorry.

Q You are talking about 1971 salary schedules, aren't you, Mr. Malasky?

A Yes.

Q And what was the highest salary that you assumed she would earn?

A \$27,061.

Q And what is that?

A That was the top salary on the GS-14 grade.

Q And how long would it take her, under your assumptions, to reach that level?

A Following the method that I used, she would reach that in the last year that she worked, just before she retired.

Q Now, do any of the salary figures which you've used reflect inflation after 1971?

[179] A No, they do not.

Q What are the gross earnings which you projected for Nancy?

A \$583,325.

THE COURT: What is that figure again?

THE WITNESS: \$583,325.

Q (By Mr. Douglas) What are you assuming Nancy's living expenses to be each year?

A I assumed annual living expenses of \$2,150.

Q And what is that based on?

A This was based primarily on Mr. Feldman's testimony that her living expenses amounted to \$2,120 a year; and I guess partially rounding it to be slightly conservative, raised that to 2,150.

Q Why didn't you increase the living expenses for the —

THE COURT: Just slightly conservative?

THE WITNESS: Right.

Q (By Mr. Douglas) Why didn't you increase her living expenses for the next thirty-two years because of inflation?

A Well, to be consistent, either all the figures that are used should be increased for inflation, such as gross salary and any interest discount which is used, or none of them should be.

[180] And in this case in determining a present value it is generally best to ignore inflation throughout and determine everything in terms of a particular year's dollars. In this case, 1971 dollars.

So that all calculations are in 1971 dollars. Really nothing was increased to reflect inflation. The effects of inflation I tried to eliminate throughout.

Q Have you estimated the annual income tax on her salary during this period?

A Yes, I have.

Q What is the range of income tax percentages that you have used?

A The range was from 20.7 per cent to 30 per cent.

Q And where did you derive those figures?

A These figures were derived from Publication No. 79 of the Internal Revenue Service entitled, "Statistics of Income — 1971 Individual Income Tax Returns"; and specifically Table 3.13, "Separate Returns of Husbands and Wives".

Q Could you tell the Court what that table does?

A The table shows for different income ranges the number of returns, tax returns; the total taxable income; and the income tax, the total income tax for all those returns.

And these are given for salary ranges, the lower salary levels in thousand dollar brackets, such as 10,000 to 11,000, and at higher salaries the brackets go up to \$5,000, [181] such as 25 to 30,000.

And using the median salary in the range, I developed a tax rate just by dividing the total income tax by the total taxable income for that range.

BY THE COURT:

Q You mean this is a table which shows what per cent of gross income is paid by taxpayers in different brackets of gross income?

A Yes. In other words, for taxpayers with gross income of \$10,000 to \$11,000 in 1971 it shows the total taxable income. In this case it was \$435,000,000. And the income tax, \$86,000,000. It does not show the percentage, but that's just a question of division.

Q So that on the average each of those taxpayers — I mean taxpayer paid 20.7 per cent of gross income?

A Yes. This particular table is for separate returns of husbands and wives only.

Q All right. Of course, that 20.7 per cent, as an average, represents or includes taxpayers who paid a greater per-

centage of their gross income than 20.7 and taxpayers who paid a smaller per cent of gross income than 20.7, right?

A Yes, sir.

Q What relevance does that 20.7 per cent have to what the actual rate would be on that income?

There is no way of knowing, I guess, unless you know [182] what the deductions are; is that right?

A Well, the 20.7 would take into account the average taxpayer in that income range and take into account what the average deductions are.

Q Yes.

A Clearly the actual range, you know, I would have no idea what it is. They are higher and lower.

Q That's the average?

A Yes.

BY MR. DOUGLAS:

Q Do you have a copy of that publication with you?

A Yes, I do.

Q What is that called?

A The publication is "Statistics of Income — 1971 Individual Income Tax Returns". It is Publication 79, December, 1973 put out by the Department of Treasury, Internal Revenue Service.

Q So what do you calculate Nancy's net future earnings to be, after taxes and after necessary living expenses?

A \$365,779.

Q Now, have you applied to that figure a discount rate to reduce that amount to a present value as of 1971?

A Yes, I have.

Q And what was that net discount rate?

A The net discount rate was 1½ per cent per year.

[183] Q And how did you arrive at that figure?

A That represents the difference between an estimated investment rate that a prudent non sophisticated investor could be expected to earn over the period involved, which was the next forty years commencing in 1971, minus an estimate of the rate of inflation — the expected rate of inflation over that same period of time.

Q And what investment rates did you use?

A Well, I looked at several different investment rates. One, for example, was 4.14 per cent, which was the average rate on mutual savings bank deposits over the last eighteen years.

Q Was there another rate you looked at?

A Yes, several others. The maximum rate permitted by the Federal Reserve Bank on time deposits in member banks — this was much lower; 3.75 per cent.

I looked at rates for some specific mutual savings banks, again over a fairly long period. That was 4.24 per cent. And also at the rates earned by life insurance companies, again over a similar period; that was 4.64 per cent.

The latter was not really for the purpose of seeing what a non sophisticated investor would earn, but really as a guideline, more sort of a top figure because the life insurance companies are generally among the most sophisticated investors, particularly in long term securities and [184] long term investments.

BY THE COURT:

Q Now, I'm led to understand that the most recent report of the Travelers Insurance Company shows a return on investments of close to 10 per cent and that they are fully invested in bond securities. I notice by this morning's paper that you can buy Con. Edison bonds that yield over 10 per cent and bonds of a long standing electric utility company in Hartford that yield over 8 per cent.

Now, where do you draw the line between a prudent

non sophisticated investor and the actual state of the market on returns of investment?

A There are a couple considerations. One of the things I was estimating was a rate to be used over the next forty years.

If we look at the past forty years, interest rates have fluctuated substantially. I guess going back probably almost fifty years, life insurance companies were then earning over 5 per cent. They dropped down in the early 1930's and it wasn't until 1970 that they got back to the position they were in in the 1920's.

And I agree an investor today could take some money and put it into an 8 per cent bond.

Q He could put some into a 10 per cent bond.

A 10 per cent. A 10 per cent bond might be a little [185] risky. It might not be the type of thing that a prudent investor would go into.

Q Do you think Con. Edison would be allowed to fail in New York City, serving that population?

A Con. Edison probably would not. But an awful lot of people thought that the Penn Central Railroad wouldn't be allowed to fail. And their securities certainly are not very strong.

Similarly, I guess what was one of the most touted life insurance companies and investment companies, Investment Funding --

Q Touted?

A It was touted and there were an awful lot of supposedly very sophisticated investors, including big insurance companies.

But really more important, what could be earned with this money over the next forty years would have to take into account more than what someone could invest in today. I think it should take into account what they can

invest in five years from now with the money that would be earned then, ten years from now, fifteen, twenty, etc. And there may not be even in five years an 8 per cent investment. There may not be a 3 per cent investment.

In addition, people with income levels that I assumed I was for many years, on the order of, say, \$15,000 a year, [186] generally do not invest in corporate bonds. Most of their money goes into time accounts at commercial banks. Time accounts at commercial banks have greater assets or greater deposits than either Savings & Loan Associations or Mutual Savings Banks and their rates are always lower than the other two. And there you are talking —

Q Well, I just told you about the Travelers.

A Current earnings? Well, the Travelers —

Q I mean they went out and borrowed money at as high as 10 per cent in order to buy long term investments yielding 9 per cent, to make sure that they could have the benefit of a 9 per cent return over a long period of time.

A Yes. This is a return only on the current year's investment, the 9 or 10 per cent. It is not a return on their total investments.

Q Well, it's current. I mean we are talking 1974, not 1971. In that sense, it is current.

A Well, no; but what I mean by that —

Q It is total investment of present income.

A Yes, it is just present income.

Q Right.

A It's not their total investment return for 1973 or 1974.

Q But this case is concerned with present income; income that's coming in in one lump now. In that sense.

[187] Well, anyhow, I've posed a question for you.

A Yes. I think one — just to answer it further, I wanted to be consistent in my estimate of the investment

rate and my estimate of the effects of inflation. And I followed a consistent approach in both.

And probably the same consideration would apply to the estimate of the rate of inflation I used because I again did not use a current rate.

I think the only thing, whatever is done, I felt that I had to follow a consistent approach in making an estimate. Otherwise, the results would not be meaningful.

Maybe I'll get to that.

THE COURT: All right.

BY MR. DOUGLAS:

Q Mr. Malasky, did you use an inflation figure?

A Yes. I reduced my estimated investment rate by an expected rate of inflation.

Q And how many years did you base your inflation rate on?

A This was based on the same period that was used to determine the investment rate. Here I took —

Q How many years was that?

A The past eighteen years.

Q And what was the average — what did you use for an inflation rate?

[188] A I used the increase in the Consumer Price Index.

Q And what did that average out over eighteen years?

A 2.87 per cent.

Q Excuse me?

A 2.87 per cent.

Q And what was the inflation rate in 1973, if you know?

A During the calendar year 1973 it was approximately 9 or 10 per cent. I think that answers it.

Q Do you know what it is running at today?

A I don't know specifically or know what the last twelve months are, but I think it's approximately 10 per cent if you go from the most recent twelve months available.

Q So if we would turn to your 1.5 per cent net discount rate, could you describe to the Court how you arrived at that?

A Here again I looked at several different estimates of future investment rates based on past history, took the difference between an estimate of future increase in the Consumer Price Index, or the effects of inflation, again based on very similar past history.

The basic objective was to get a difference between an anticipated investment rate and an anticipated inflation. And to do this most consistently I felt it was appropriate to use identical periods and compare some reasonable measures.

[189] In this case, an average investment rate, such as mutual savings banks over eighteen years, with an average increase in Consumer Price Index over the same eighteen year period.

Q But tell me about how you arrived at the 1.5 figure?

A Well, the difference I came out with comparing the mutual savings bank rate of 4.14 per cent and the Consumer Price Index of 2.87 per cent was 1.27 per cent.

Some of the other measures, one came out with a much lower difference of —

Q What was that?

A 0.88 per cent.

Q Between which two figures?

A This was between the maximum rate permitted on time deposits in commercial banks, which is the most common form of investment, and the same Consumer Price Index.

I also had a higher rate when looking at life insurance companies. And this difference was 1.77 per cent.

Based on these items and taking into account that this was a non-sophisticated investor, I assumed a rate of 1.5 per cent.

Q Now, applying that discount rate, what is the present value as of '71 of Nancy Feldman's projected earnings?

A \$253,424.

THE COURT: Two hundred what?

[190] THE WITNESS: \$53,424.

Q (By Mr. Douglas) Now, do you consider your conclusions a conservative one? And if so, why?

A Yes. I do consider that they are conservative, for several reasons:

One, the salary scale that was assumed in accordance with the increases in steps from GS-10 to the top of GS-14 appeared to be relatively or very low based on, one, her past performance which showed an increase over less than a two-year period from a \$6,500 annual rate of salary to a \$10,000 annual rate of salary; and also the testimony given by Mr. Cogen that he expected that she would probably receive increases of at least a thousand dollars a year.

The increases that I used at that same period were about \$400 a year in accordance with the salary scale.

The number of years that I assumed she would be out of work for raising her children was the upper end of the range given by Mr. Feldman in his testimony.

The discount rate that I used, the 1½ per cent, was higher than any of the rates that I determined using reasonable common investment media that I used to a great extent by prudent non-sophisticated investors. And a higher investment rate will reduce the present value or the discounted value of money in the future.

MR. DOUGLAS: That's all I have on Direct, your [191] Honor.

CROSS-EXAMINATION

BY MR. MOLLER:

Q Mr. Malasky, do you have in front of you your computation of figures or notes which you've used to testify today?

A Yes, I do.

Q May I see them, please?

(Documents handed to counsel.)

MR. MOLLER: Thank you.

May I have just a minute, your Honor?

THE COURT: Surely.

(Defendant's Exhibit C for identification: Computations.)

BY MR. MOLLER:

Q Mr. Malasky, showing you one of your papers, which has been marked C for identification, I take it — and this is the present value of Nancy Feldman's future income; correct?

A Yes.

Q And I take it that if we take the left-hand column starting with \$11,517, plus the last figure 27,000, if you just add those figures up that gives you \$583,325, is that right?

A Yes, it does.

[192] Q So that you just took all of the years that you felt Nancy Feldman was going to work, took what she made those years and lumped it together?

A That was one of the calculations I did, yes.

Q Well, that's the calculation which you used to report to his Honor that you felt her total earnings were \$583,325, correct?

A Yes. That was the total gross earnings.

Q All right. So that if we were to take each year, Mr. Malasky, and take the total deductions, that would be taking the first year \$11,517, take out personal expenses of \$2,150, her income tax of \$2,000, and take her net income, her net income for those years would be reduced by almost \$200,000, wouldn't it?

A By more than \$200,000.

Q Right. So that actually even using your lump sum figures rather than a formulation basis, according to your figures her net gross income was \$365,797?

A Could you rephrase the question? I did not understand it.

Q All right. If instead of taking a lump sum basis, as you did over here, or taking a formula basis of each year, if you just take her actual net income loss, even using your cumulative basis, the net loss is \$365,797?

A That is the net income loss, yes.

[193] Q Sir, could you figure out for us \$365,779 reduced to present value at 8 per cent discount?

A Right now?

Q Yes.

A Well, I could. It would take a little while because I would really need that sheet and I would have to do it year by year.

MR. MOLLER: I would like to offer Exhibit C as a full exhibit, your Honor.

THE COURT: Full exhibit.

(Defendant's Exhibit C for identification: Received in evidence.)

A To answer your question, it's not meaningful to reduce 365 to present value. I could reduce the year by year figures because there's a different discount factor applied to each year's earnings. I could do that.

Q (By Mr. Moller) Mr. Malasky, have you ever before ever discounted present value by using less than 6 per cent?

A Yes, very often.

Q When?

A Well, for valuations of pension plans and for valuations of self-insured disability benefit plans.

Q Sir, isn't it recognized in the trade that the minimum amount of discount in determining future valuation at the present time is 6 per cent?

[194] A No, it's not. As a matter of fact —

Q Sir, what is a risk free rate of return at the present time in the United States?

A A risk free rate of return today?

Q Yes, sir.

A 5½ per cent, 5¼ per cent.

Q Are Treasury bills paying 7 per cent?

A For what period of time? For what period of investment?

Q For two years.

A For two years, yes. I believe so.

Q For 40 years?

A For 40 years, no.

Q It would be more than that, wouldn't it?

A No, I don't think you can get a risk free 40 year investment.

Q How about if I went to Society For Savings and said, "Here, here is my money, keep it for four years". I would get a 7½ per cent rate of interest, wouldn't I?

A Yes.

Q And that would be insured by the Federal Insurance Deposit?

A Federal Deposit Insurance Corporation, yes.

Q That would be pretty risk free, wouldn't it?

A Very.

[195] Q In fact, if you were to take even your commuted value, and I'll give you this back so we can get your commuted value at 8 per cent — if we take your commuted figure of \$253,425, actually there would be some municipal bonds which would pay close to 8 per cent interest, would there not?

A I don't know if they are risk free — well, I don't know if there are municipal bonds paying that much.

Q And that would be income tax free?

A Yes, it would.

Q And if they are invested at 8 per cent that would spin off \$20,273 of income each year?

A If what were invested? I lost you.

Q If your commuted value of \$253,425 were invested at 8 per cent a year that would produce income of \$20,373.92?

A The number sounds approximately right.

That's not necessarily true. An 8 per cent municipal bond might be purchased at a discount so that your income would be less than that figure.

Q Let's take Judge Blumenfeld's figures —

THE COURT: If purchased at a discount the income would be greater. You would have to pay a premium.

THE WITNESS: If the yield to maturity were 8 per cent you would be getting a capital gain when it matured.

[196] THE COURT: You would still have \$253,000 at the end of the term.

MR. MOLLER: That is right.

Q (By Mr. Moller) And if you take Judge Blumenfeld's figures with respect to Travelers' bonds or Con. Edison's

bonds at 10 per cent, that would produce \$25,000 a year; correct?

A Yes, it would.

Q And if taking your figures the living expenses were only — \$2,150, then I take it there could be banked \$23,000 each year; so that at the end of forty years you would have \$253,425, plus \$23,000 a year at forty years; \$920,000 more, or close to a million dollars?

A The arithmetic sounds right, yes.

Q And do you think it is reasonably probable that Mrs. Feldman would have died at age seventy-seven with an estate of one million dollars?

A It's not probable at all. But I don't think that's what the calculations show.

Q I see. Well, giving you Exhibit C, if we take a recess could you determine for us what the figure of \$365,779 commuted to present value at — well, we'll be conservative — at 6 per cent; could you do that?

A Yes, I can.

[197] MR. MOLLER: Fine. Might we have a recess, your Honor?

THE COURT: Recess.

(Short recess.)

[198] BY MR. MOLLER:

Q Were you able to finish that, Mr. Malasky?

A Yes.

Q And what is the figure, sir?

THE COURT: Do you carry a pocket calculator with you?

THE WITNESS: Yes, your Honor. I would not have been finished so quickly otherwise.

THE COURT: Yes.

A Assuming a net discount rate of 6 per cent and no change in any other assumptions, the present value as of 1971 of future income is \$102,878.

Q All right, sir. In other words, if we take the figure of \$365,779 and then you use the discount rate for each year; correct?

A The calculations are not shown there. That was not a calculation (indicating).

Q Now, sir, in your living expenses, personal living expenses for Mrs. Feldman, I take it you considered rent and food, that's all?

A Yes.

Q You didn't take medical expenses —

A Well, no, wait a minute.

The testimony given by Mr. Feldman I believe took into account rent was one item and the other piece included [199] food. I'm trying to think.

Q Well, to refresh your recollection, he said rent at \$90 a month, which came to \$1,090; food at \$20 a week, which came to \$1,040; giving a total of \$2,120, to which you in your conservatism add another \$30.

MR. DOUGLAS: Your Honor, if I may object.

Unless counsel is reading from the transcript, that is not my recollection of the testimony. My recollection of the testimony is that that \$20 a week related to substantial amounts besides food; that the \$40 for the two of them included health and necessary clothing.

MR. MOLLER: Well, if that's what counsel claims it is even more ridiculous than I thought.

BY MR. MOLLER:

Q Mr. Malasky, whom do you know in Washington living on \$2,150 a year?

A I don't know very many people in Washington and I don't know what they live on.

Q Do you know anyone, anyone anywhere, do you of your own personal knowledge, a single person living on \$2,150 a year?

A What do you mean by "living on"?

Q I mean, you know, existing; still being alive.

A I believe I did.

[200] Q When?

A When I was in school. Probably less than that, actually.

Q Were you at that time making \$27,160?

A No.

Q But under your figures, even with Mrs. Feldman making \$27,061 you still feel that her rate of supporting herself would be \$2,150?

A Well, the \$2,150 was based on the testimony. I'm not an expert in the field of living expenses or what it would cost someone to live. And I couldn't do anything other than use the evidence presented in court.

Here again, if I interjected my own personal feeling I think people spend whatever they earn, but that's a lot more than living expenses and a lot of other things are included.

I will admit that I spend more than \$2,150 a year to live. But it also takes into account a lot more than food and clothing.

Q Right. Well, under our law I take it you can deduct what it costs him for personal living expenses reasonably necessary to keep himself in a condition of health and well being — to quote your Honor's charge on Page 9.

So that, Mr. Malasky, again with your figures on Mrs. Feldman on Exhibit C, with Mrs. Feldman earning

[201] \$27,000 a year you still put her personal living expenses at 2,150?

A That was the assumption I used and it was based on reasonable evidence.

Q Well, Mr. Malasky, are you familiar with the Department of Labor's annual budget for a high level of living of a four-person family in the Washington, D.C. area in the autumn of 1971?

A No, I am not.

Q Are you familiar with the fact that the total budget for that family was \$16,345?

A No.

Q Or if you deduct the taxes, \$12,002, for four in the family?

A Well, no.

MR. DOUGLAS: Your Honor, I would like to make a point and object to further questioning of this kind because the test is not what a family of four would use in an annual budget. It is what was reasonably necessary to support the woman who was killed in the airplane crash.

MR. MOLLER: Your Honor, I can only go one step at a time.

But you put Mr. Malasky on as an expert and qualified him as such. And I think this is proper Cross-Examination.

[202] THE COURT: You may cross-examine.

BY MR. MOLLER:

Q Sir, did you consult those tables?

A Well, what I —

Q Yes or no. Did you consult them?

A No.

Q Sir, are you familiar with the fact that following along Mr. Douglas' objection, that if we were to take the \$12,000 and reduce it to what a husband and wife under thirty-five years of age would spend, that that figure would come to \$6,342?

A Is that from the same table?

Q Yes. Well, not from the table, but using the table as a computation.

A How was that determined?

Q By applying the Table 147 on Page 327 of the U.S. Department of Labor's 1972 handbook of labor statistics; that the scale for a husband and wife under thirty-five years of age is 49 per cent of the amount required for a family of four.

A If you say you did it, you know.

Q So that even cutting that down, I mean under the Department of Labor statistics with one person would be a minimum of \$3,300.

A May I ask, I lost you when you indicated what these [203] tables were.

Q All right. Here, let me show you the table.

THE COURT: I think it would be suitable to have them marked because you are talking about an exhibit not in evidence.

MR. MOLLER: Very good, your Honor.

THE COURT: Are you offering it now as a full exhibit?

MR. MOLLER: No, your Honor.

THE COURT: Exhibit D for identification. At least we know what it is.

(Defendant's Exhibit D for identification: U.S. Department of Labor Statistics.)

BY MR. MOLLER:

Q Showing you Exhibit D for identification, take your time and look at it. But this is the area here (indicating).

A I would not have used these tables.

Q You do not recognize them as proper tables for the cost of —

A No, I would say that they are very definitely improper. They say specifically, "Annual budgets at a higher level of living". I don't think that was what was called for.

It also includes much more than food, clothing and medical care necessary for living. It includes things like [204] contributions. I don't think contributions are required to keep or would have been required to keep Mrs. Feldman in well being.

I don't think she would have to live at a higher level of living or whether that would necessarily be included.

Q Well, you mean you don't think that her husband, a graduate of Yale Law School who is now making between \$18,000 to \$21,000, and she making — I assume that if her salary is going to increase his is going to increase, is it not?

A I would assume so. I think he probably would also.

Q And you don't expect these people with a combined income of \$50,000 to be living at a low standard of living, do you?

A No, I don't. But I don't think that was what was asked for. It was asked what was necessary to keep them in good health.

Q Right.

A Well being.

Q In other words, what you've done, Mr. Malasky, is taken a fictitious, really a fictitious circumstance and applied a fictitious scale to it?

A No, I have not. It's taking a legitimate circumstance according to the evidence.

Q Under your theory, if Mrs. Feldman's salary was [205] going to increase from 10,000 to 27,000 what would your estimate be of Mr. Feldman's salary of 21,000 at this time increasing in that forty year span?

A In that forty year span?

Q Yes, sir. Thirty-two years, we'll take.

A From what it is today, I think it was 21, it would probably increase at a higher rate. I would estimate it on a reasonable basis, say \$60,000.

Q And certainly if he is making \$60,000 and she's making 27,000, they are not going to be in a low standard of living, are they?

A They are not going to be in a low standard of living. But again I would not have used that.

Q And likewise the income tax rate that she would be applying if he's making \$60,000 and she's making \$27,000, using today's standard, her income tax rate would be close to 50 per cent, wouldn't it?

A No, not if they filed separate returns, and that's what was used. I was reflecting what her income tax would be based on her income.

Q Well, Mr. Malasky, you would know as a tax man versed in taxes that they would lose money by filing separate returns; that the best tax savings would be filing a joint return?

A Well, the best tax saver would be, yes. If I were al-[206] locating income tax between Mr. Feldman and Mrs. Feldman, the proper way to do it would really be to determine both on a joint return, then determine each of them on a separate return and allocate based on the percentage that each would pay on the separate return basis.

I would have ended up with a lower tax figure than I actually used because I have done allocations of tax for life insurance companies.

Q You can't have lower than 20 per cent?

A Well, no, that's not true. In other words, suppose we take the situation you postulated, where Mr. Feldman earned 60,000 and Mrs. Feldman earned \$27,000.

I agree with you that they would be better off filing on a joint basis. You know, without knowing specific deductions.

I would assume that we would determine a tax. Let's say for argument's sake it's \$8,000. Now, that's not realistic, but just for argument.

If I determine a tax for each of them on a separate return basis with her income of 27,000, I might come up with a tax of 2,000. With his of 60,000, on a separate return, I might come up with 8,000. For a total on separate returns of \$10,000.

What this would mean is on separate terms she would pay 2,000 out of \$10,000, or 20 per cent. And I would really [207] allocate as her income tax from their combined income 20 per cent of the 8,000 that they actually paid on a joint return, or 1,600. Really, I would probably end up with less.

I think on that basis I used too high a figure. But it is a reasonable assumption. I think all the assumptions are consistent.

You can't just change one without changing others.

Q How many times, Mr. Malasky, have you done a computation such as this, where a person has been killed in an accident, or been killed, and you've estimated present earning capacity reduced to present value?

A Where a person has been killed in an accident?

Q Yes.

A I don't recollect having done it.

Q So this is your first one?

A This specifically, yes.

Q All right. And in doing this, sir, I take it that you used primarily actuarial tables rather than tables that an economist might use?

A No. I used very few actuarial tables. Actually, I didn't use any actuarial tables. It depends what you define as "actuarial".

Actuarial tables would include economic information. That's one of the things that's required to become a Fellow of the Society of Actuaries. But most of them were things [208] more than an economist would use, if you would say that.

Q From an actuarial standpoint, your background has been primarily actuarial; right?

A Yes.

Q In other words, with your nine years of Metropolitan Life it was pretty much to determine what the premiums were going to be and how much money Metropolitan Life would have to take in to make sure that either at the end of the life insurance policy or at the end of the accident-health policy what Metropolitan Life is going to deliver, correct?

A Well, no. For example, I never did anything like that.

Actuarial work involves a lot more than just determining a premium rate for life insurance policies. A lot of the things that I did involved analysis of future investment returns, analysis of income tax; you know, which might be considered the province of a lawyer. But actuarial work is much more diverse than the specific narrow ground, and at Metropolitan I got involved in quite a bit more. I never specifically determined a premium rate for an individual life insurance policy.

Q But you have worked on what it would cost so that those rates could be filed?

A I did not personally. Metropolitan has a lot of actuaries. Not every one works on, you know, that particular [209] item. There's probably about eighty.

Q From an actuarial standpoint if a person were to take, say, and invest a dollar at 7 per cent interest that would double in about ten years, wouldn't it?

A Roughly, yes.

Q So that if any amount of money awarded were invested at 7 per cent that would double about every ten years?

A Can I just check that roughly?

Q Surely.

A It will take about a second.

Q Okay.

(Pause)

A That's roughly right.

Q All right. So putting it another way, if there is a forty year span, if one dollar invested today doubles every ten years, then at the end of forty years for one dollar invested you would have \$16?

A Yes, you would.

Q Now, one other area. In both your Exhibit C and in Exhibit 16, I take it that you have followed essentially the general pay schedule set forth in Plaintiff's Exhibit 16; correct?

A Yes. Although on a conservative basis.

Q Right. But wouldn't it be fair to say that, actually, these figures set forth in this schedule, in part the reason [210] for the increase is to hedge on inflation?

A No. From what I understand it is specifically not to hedge on inflation. They are specifically to represent merit increases. From what I understand from the testimony, that there are changes in the schedules and in the amounts of them that reflect inflation.

Q But nonetheless they are based on a 500 or a \$1,000 increase, correct?

A The schedules are. The amounts that are used were actually less and ranged from, really, like \$300 to \$700 because of the part of the schedule that I was on.

Q Would you agree with me, sir, that that certainly is one of the ways of hedging against inflation, to make sure that periodically you have a \$300, \$500 or thousand dollar raise?

A Giving a \$300 or \$500 raise is a way of hedging against inflation. That's not what —

Q In addition, you also took an inflation factor in determining your discount rate, correct?

MR. DOUGLAS: Your Honor, I object to "also took into account". That is a misstatement of the witness' testimony.

MR. MOLLER: I'll withdraw the "also".

Q You took into account inflation when you came to your discount rate, correct?

A What I tried to do, I think I mentioned in my testimony, in developing a present value — whether it be an estimate of future earnings of Nancy Feldman or the present value of future benefits of the General Motors Pension Plan — you have to use a consistent set of assumptions throughout.

Now, I believe I said earlier that I eliminated or attempted to eliminate the effect of inflation on all the amounts I was determining and in all my calculations, so that my result would reflect the value of Mrs. Feldman's future earnings as of 1971 in 1971 dollars.

So that, for example, you know, in determining a net discount rate I took a gross rate of interest and reduced that by the estimated value of inflation.

Similarly, I could have taken a salary scale that reflected inflation and reduced it by inflation. I did not do that.

Another approach would have been to increase everything by inflation and not reduce the interest rate by inflation. If I did that and did that consistently, I would come up with the same result; presumably.

Q All right. Now do you want to answer my question?
A I believe I did.

Q I don't think so.

May the question be read, your Honor?

THE COURT: Read the question.

(Question read back.)

[212] A What was my answer?

Q (By Mr. Moller) I don't know. But I expect either a yes or a no.

You gave a long dissertation on various ways of handling it. My question is did you or did you not take into account in determining a discount rate a rate of inflation?

A Yes.

Q What authority, sir, do you have why a deceased plaintiff or a personally injured plaintiff should have protection against inflation, when nobody else does?

A Repeat the question, please.

Q Certainly.

What basis do you have why a deceased plaintiff or a personally injured plaintiff should have protection against inflation when nobody else does?

A I have no authority. But I was not giving her protection against inflation.

Q Well, if you take a rate of interest for growth of 4.14, I understood you to say that you deducted for inflation a figure of 2.87, which gave you 1.27 per cent; although when you used insurance rates you came up with a discount of 1.77 and you rounded that off to 1.5 per cent as a discount rate for one year. Am I correct in that?

A That is correct. No, you're not —

[213] Q So that in answer to my question, then, you know of no authority which allows protection of a deceased person to be protected against inflation when the rest of us are not?

A I know of no authority, no.

Q If we took on Plaintiff's Exhibit C the figure of \$365,779 and discounted it at what is our claim is a conservative figure of 6 per cent, then your figure for that loss of earning capacity would be \$102,878?

A If I just changed the 1½ per cent to 6 per cent, yes.

MR. MOLLER: Thank you, sir.

BY THE COURT:

Q Now, in all your testimony the results you have reached would provide for payment on an annual basis of salary, less taxes and living expenses year by year, is that right?

A Yes. The number I came up with, either the \$253,424, assuming 1½ per cent, or the other, would provide for specifically payment of salary, less federal income tax and living expenses for the specific years that I assumed.

I assumed that she would not be working for a particular eight year period, from ages thirty to thirty-seven.

Q Did it make any difference which years you took out?
[214] A Yes, it does. If I took out later years it would increase the result because her salary payments would be received earlier and, therefore, the effect of the discount would be less.

Q All right. So you took out the years thirty through thirty-seven?

A Yes. This was again based on the testimony.

MR. DOUGLAS: May I?

THE COURT: Yes, surely.

REDIRECT EXAMINATION
BY MR. DOUGLAS:

Q Mr. Malasky, what is the current inflation rate, approximately?

A It is approximately 10 per cent a year.

Q And what is the current interest rate on corporate bonds?

A Approximately 8 per cent, 9 per cent. It would vary substantially by the quality of the bonds.

Q Now, if you were to apply those in determining a discount rate would you not end up with a higher figure than your starting point?

A Yes. I would end up with, in effect, a negative discount rate if I just used the current rates in effect today.

THE COURT: Well, what is your authority for that 10 per cent?

[215] THE WITNESS: That would be the increase in the Consumer Price Index. I don't have it with me, but it is published by the Bureau of Labor Statistics and that would be comparing December, 1973 with December, 1972.

I think similar figures would hold for a more recent twelve month period also.

THE COURT: What Consumer Price Index? Who publishes that?

THE WITNESS: It is published by the Bureau of Labor Statistics and I guess the monthly labor review includes figures.

It is published by a lot of government sources. But that is the primary source or initial source; the Department of Labor of the U.S. Government. It's published by a lot of — like the Social Security Bulletin each

month includes the Consumer Price Index and various components of it.

THE COURT: All right.

BY MR. DOUGLAS:

Q So if you were to apply the current rates you would end up with a higher figure after deduction of income taxes and living expenses than when you started?

A Yes, I would.

Q And why did you not adopt that?

[216] MR. MOLLER: I object, your Honor. It is immaterial why he did or did not.

THE COURT: Overruled.

A Well, that was not a reasonable approach. Again I was trying to estimate what would hold over a forty year period.

Q And why did you pick a forty year period?

A That's the period that we were talking about here; from 1971, when Mrs. Feldman was age twenty-five, until her earnings were assumed to stop when her assumed retirement would be at age sixty-five. And based on that, it is not a reasonable assumption either to assume that inflation would continue at 10 per cent a year over the forty years, or that interest rates would continue at 8, 9 or whatever per cent a year for a forty year period.

In general, in all the work that's done with assumptions in this regard you would have to look at the history of both interest rates and inflation. And again it is a judgment, but based on past history these do fluctuate.

I would not have come up with a proper present value if I just took into account the current day inflation and interest rate figures.

Q Why is that?

THE COURT: It's too horrible to contemplate. It's working ourselves into complete bankruptcy.

[217] A Well, no, it's not bankruptcy. You'd just be carrying around a lot of money.

Q (By Mr. Douglas) Is it a fair statement that it is sound practice, when you are figuring out future projections, to look back over a substantial period of time?

A Very much so.

MR. MOLLER: I object to that, your Honor. Obviously, it's leading. I don't think it's a fair statement.

THE COURT: It may stand.

MR. DOUGLAS: Would you read the question?

(Question and answer read back.)

A It's a very common practice in all work where you would be estimating an interest rate for a future long period of time.

It would not be if I were estimating an interest rate to apply just for one year in the future. All I would look at is current day rates.

Q (By Mr. Douglas) Did you read Mrs. Rodmann's testimony wherein she stated that the salary scales listed in her R-3, which is also Exhibit 16, stated that the scales listed there were wholly outside of cost of living adjustments?

A Yes, I did.

Q And that the cost of living adjustments were in addition to those scales?

[218] A Yes, I did.

Q And that those steps were merit increases?

A Yes. I believe they required satisfactory performance, I think it was said. But it was based on merit.

Q So when you did your computations of future salary years they were based on the 1971 schedule?

A Yes.

Q As related by Mrs. Rodmann in her testimony?

A Yes.

Q Now, Mr. Moller in a very effective fashion was asking about interest rates and suggesting that possibly there should be a discount of 6 per cent. Why do you believe that the inflation has to be deducted from the interest rate to arrive at a proper discount rate?

A Well, as I believe I testified before, in determining a present value as of a specific point in time you have to be consistent in your assumptions. And if inflation is taken into account in one place, it should be taken into account in all areas that are affected.

In the way I did the calculation I assumed a salary scale based on 1971 dollars and did not adjust for inflation, did not increase them. They would increase substantially if inflation were assumed.

Similarly on the living expenses, an estimate was made and it was assumed that these would not change for [219] inflation. To get a present value as of 1971, an interest rate that reflects or that does not reflect inflation should also be used.

Another approach would be to use an interest rate that was not reduced by the effects of inflation. However, if I were doing that I would have to make two other changes to get a consistent result. I would increase the personal living expenses by inflation and increase the salary by inflation.

Q You have not done so?

A No, I have not.

Q Now, will you tell the Court why it is that you reduce the interest rate by inflation?

A The interest rate that is assumed, in effect a gross rate, does take into account some effects of inflation in the future. And the net rate that's used should be adjusted or

should be reduced by an estimate of future inflation to reflect a net interest rate without taking account of inflation.

In effect, what the investment earnings or interest earnings would be if there were no inflation at all in the future.

BY THE COURT:

Q Well, is that consistent?

I mean if you reflect it there and you say because [220] there will be inflation you don't reflect it in salary or in living expenses because it wouldn't be consistent if you are going to use a constant interest figure. But you didn't use a constant interest figure; you used an interest figure reduced because of an inflation item or effect.

A Well, in effect what I was trying to use was a net rate that does not reflect inflation.

Q Well, you came up with the net rate of 1½ per cent.

A Right.

Q Do you mean the figure of 4 point something does reflect inflation?

A In effect it would, yes.

Q What do you mean, "in effect"? I mean it is certainly a good deal less than 8 per cent, which is readily obtainable, or 7, and these may well reflect inflation, because as distinguished from an average over a forty year period of 4 per cent.

A Again it's a good deal less than 8 or 7, but now similarly the inflation that I use is a good deal the current inflation of 10, or the inflationary rate

Q I know. But you did use some. That's why it doesn't seem to square with your premise that of consistency you excluded inflation all along in all of the operative figures.

A The assumed rate that I used — what I was trying

[221] to get, the 1½ per cent is supposed to represent the difference between an expected investment rate that a prudent investor would get and the rate of inflation.

In other words, it's supposed to represent what would be earned if there were no inflation.

Now, there are a couple of things to consider. Of the 4 or 4¼ per cent that I used as a gross rate, I agree it seems very low compared to what could be obtained if you went out today. But I don't think it really should be compared to the others.

Q You have to discount the higher rates of interest, 8 per cent and 7 per cent, because they reflect inflation. When you get down to 4 or 4 and a fraction you are taking a forty year history.

A Well, no; the same thing is true if I were discounting the 7 or 8 per cent because they reflect inflation. Really, the 4 per cent is a very similar figure to the 7 or 8. The 7 or 8 represents what I can get if I go out today like to a savings bank. I can get 7½ per cent for a four year period.

If I were talking about a four year period I would use a much higher gross rate than I used. But the 7 or 8 is very comparable to the 4 per cent that I used. The 7 or 8 represents what can be obtained on money today for certain shorter periods of time.

[222] The 4 per cent is an estimate of what would be obtained over a forty year period in the future, based on past history. And it's done on the basis to be consistent with an inflationary rate.

Q Take your past history. Is there any time during that past history when invested money earned less than 3 per cent?

A During the period I used?

Q Well, you went back forty years, I think you said?

A Well, no. I went back eighteen years.

Q All right. You went back eighteen.

Has there been any time during that eighteen-year period when money earned less than 3 per cent?

A At the very beginning of the period, yes; slightly less than 3 percent. This would be back in 1956, 1957.

Q You didn't find any time when it earned less than 2?

A No. Not that I used, no.

Q Then over an eighteen-year period a 4.1 — was that the average?

A Yes, 4.1. Again, I obtained a difference of like 1.27 per cent and then used 1.5 per cent. In other words, I looked at several different —

MR. DOUGLAS: Mr. Malasky, I think the Judge is interested in the theory.

[223] If I might. I didn't mean to interrupt you.

THE COURT: Well, I'm interested in testing his assumption here, which is that the 4.1 average over a period of eighteen years shows that there can be an expected inflation so far as that particular experience is concerned. How does that support the inflation?

Just looking at those figures and that increase over the period of eighteen years, how does that in itself reflect an inflation?

You have to look elsewhere for inflation, it seems to me. I'm not sure, but I'm just questioning.

But if it was never less than 2, I mean for you to come up with a net of less than 2, it seems to discount more inflation than you ever saw in eighteen years before, in interest; even in that very conservative interest which you take.

MR. DOUGLAS: Could I ask a question?

THE COURT: Yes, go ahead.

BY MR. DOUGLAS:

Q I think, Mr. Malasky, what the Court is asking is why, after you took your interest rate, why did you reduce it by an inflationary rate to arrive at present value? Could you address yourself to that?

THE COURT: Now, pretend that this is the question they ask you in one of those actuarial exams. You know, just give me that answer out of the book, not out of the newspapers.

A I believe the gross investment income that would be earned would reflect the effects of inflation.

I think part of it seems difficult because of the numbers involved. In other words, if I had started with a gross rate of 8 per cent as one could be obtained today and reduced it by a current rate of inflation, it would seem consistent, it would seem reasonable. But I don't —

BY THE COURT:

Q Well, yes. That's consistent.

But I'm just wondering how the consistency can be applied to the inflationary aspect you used to discount the interest, or to reduce the interest, after having eliminated it elsewhere.

You were conservative in figuring that her income could be greater because of inflation, there wouldn't be cost of living increases, and you balance that off by not increasing her cost of living by inflation. So you excluded inflation both times.

But when you get to interest, you did subtract some amount from what was the average interest over an eighteen-year period, conservative thinking. And I'm just curious as to why or how you explain it as being consistent? [225] A Well, I was trying to get a net investment earnings rate that would not reflect inflation.

Q In other words, you think that the 4.1 does include some inflation?

A Yes.

Q Over an eighteen-year period?

A Yes. The particular period isn't significant. I did test it with some others and came up with a similar difference of 1½ per cent; you know, when I used — if I went to longer periods.

Q You mean you came out with a net of 1½ per cent?

A Yes.

MR. DOUGLAS: That completes my redirect, your Honor.

THE COURT: Yes.

RE-CROSS-EXAMINATION
BY MR. MOLLER:

Q I would like to follow up just a couple of questions brought out through his Honor.

Did you take a percentage figure for the overall inflation in the last eighteen years, Mr. Malasky? In other words, if we took an inflation figure of the total amount of inflation on, we'll say, general prices within the last eighteen years.

A Yes. I used the Consumer Price Index over that [226] period.

Q And what was that?

A What was the figure I came up with?

Q Yes.

A The average was 2.87 per cent.

THE COURT: The average what?

THE WITNESS: This was the average increase in the Consumer Price Index.

THE COURT: The average per year?

THE WITNESS: Average annual increase.

Q (By Mr. Moller) So that when you said the last increase was 10 per cent, that meant for one year?

A That meant for the most recent year, yes.

Q But that was one calendar year?

A Yes.

Q So that in arriving at the 2.87 per cent you take into account that 10 per cent over that span?

A Yes.

THE COURT: That's the past ten years or past eighteen years?

MR. MOLLER: Eighteen years.

Q (By Mr. Moller) The past eighteen years, correct?

A Yes.

Q Now, when Judge Blumenfeld asked you about the interest rate eighteen years back you looked at a table. [227] Could I see that, please?

A I'm trying to see what I looked at. Unless it was this.
(Document handed to counsel.)

Q Yes, I think this is what it is.

When you said interest rates, what you are taking is the average — the rate you are taking is the average savings bank interest rate; correct?

A Well, no. I testified I looked at several different rates.

Q Well, in answer to the Judge's question you said at one time in 1956 the interest rate was below 3 per cent. But that was the average savings bank interest rate, was it not?

A That's correct.

Q And even with the average savings bank — and the savings bank would probably be about the lowest interest rate to take, correct?

A No, not for what's involved here. I think it would probably be a higher rate, actually.

Q But in order to arrive at your 4.5 per cent you took the rate in 1973 of 5.13 per cent, correct?

A Well, actually this figure, 5.33. Even higher.

Q So that actually you are taking into effect a certain inflationary trend there. In other words, that the interest [228] rates have gone from 2.9 per cent to 5.33 per cent; correct?

A Yes.

Q And from a practical standpoint, if you were working for Metropolitan Insurance and you had produced a yield of only 4.8 per cent in the last eighteen years you probably wouldn't be working there very long, would you?

A If I were working for Metropolitan Life and produced a yield of 4.8 over the last eighteen years?

Q Yes.

A Probably not. But I think the life insurance company rates are higher than a savings bank and they were less than half a per cent higher over that period.

Q All right. But what would you say would be a fair rate of interest of return on a fairly prudent investor in 1974, Mr. Malasky?

A For what period of time?

Q Well, we will say for four years.

A For four years?

Q Yes.

A Probably 7 or $7\frac{1}{2}$ per cent.

Q All right, $7\frac{1}{2}$ per cent.

And the inflation factor over the last eighteen years is 2.87 per cent, correct?

A Yes.

[229] Q So that if we took the inflation rate and applied it to our present interest rate of $7\frac{1}{2}$ per cent that would give us a difference of about just under 5 per cent?

A Well, I would never take two inconsistent things; like comparing apples and oranges.

If I were looking at today's interest rate I would use today's inflation rate. Certainly I would not use 2.87 as anticipated inflation over the next four years.

Q Let's take this a step further. Let's say that in 1974, in having the average savings bank interest, that you had the average prudent investor rate of 7½ per cent. Correct?

A That's not an average prudent investor rate.

Q Well, that's the figure you just gave me, 7½ per cent.

A For a four-year investment.

Q All right. Then based on the table you have here, if we take that and push it ahead another seventeen years, that 7 per cent interest rate, using these figures, would in all probability be close to 13 per cent; correct?

A No. History has shown that interest rates have a tendency to fluctuate substantially.

For example, looking at life insurance company rates, as I mentioned earlier, back in the 1920's they were up at a level of above 5 per cent. They went down to something like 3 per cent in the early 1930's and did not get back up again [230] to that level until 1970.

It has not been a consistent increase. We have seen an increase and rapid increases in interest rates during recent years; certainly the last ten years.

Q Well, let's take your own chart here. From 1956 you start at 2.77, correct?

A Yes.

Q And it does not decrease in any year to 1973, does it?

A That's correct.

Q In fact, it goes up each year?

A Yes.

Q And it has gone up at least fairly close to 3 per cent — excuse me — the total interest from 2 to 5 per cent; so it has increased almost 200 per cent?

A That's correct.

Q And certainly based on the figures you have now, there is no indication in the next eighteen years but that same rate of inflation will not continue?

A No, that's not true.

Q What indication do you have, sir, that it will not continue?

A I don't think you can state that — well, just based on the past history, going back beyond my lifetime interest rates have not consistently gone upwards. Interest rates [231] have gone up and they've gone down. They've gone down for longer periods of time.

Q Between 1956 and 1973, from your chart what year did they go down?

A During the last eighteen-year period?

Q Yes.

A They did not go down.

Q All right. And certainly you have no indication that during the next eighteen-year period they are going to go down, do you?

A Indications specifically based on that eighteen-year period, no. But I wouldn't guarantee that they'd continue to go up.

Q I'm not asking you that. But I'm just taking your hypothesis.

If we take your hypothesis of the last eighteen years and take today's interest rate at 7½ per cent, if that interest rate has the same history as in the last eighteen years and goes up 200 per cent, then eighteen years from now the interest rate would be approximately 14 per cent?

A Well, no, that I would not expect it to continue increasing because it never has happened in the past.

Q Well, we have already established that it has, haven't we? We have established —

[232] A We've looked at it for a specific eighteen-year period.

Q All right. And I'm asking you, sir, using those figures,

your own figures of the experience of the last eighteen years, if we start as his Honor has to here in 1974 to project another eighteen years, using the past history as you said you thought was a fair statement to use, then using that past history eighteen years from now, or in 1992, the interest rates should be 14 per cent, based upon that experience?

A No. I don't think that the fact that we've had a consistent increase for eighteen years is an indication that interest rates are going to continue increasing at the same rate, or anywhere near that, over the next eighteen years. And no one that I know of in any work where they determine present values makes such an assumption.

Q And, therefore, if we follow that, then certainly you can't expect inflation to continue at the same rate, can you?

A No, I would not expect inflation to increase the way it has in the last — you know, inflation has not had a consistent pattern over the last eighteen years, if you'll look at the numbers. Inflation over that period has gone up, gone down; several times. There is no pattern.

Q Now, just take my question step by step, all right?

A Yes.

[233] Q You have used the experience over the last eighteen years, correct?

A As one guide, yes.

Q All right. Using that one guide, just that one guide alone, Mr. Malasky, if we applied that one guide and if interest is now at 7½ per cent, applying that guide — just accept for the fact that it is there — if we do apply that guide, then in 1992 the interest rate would be 14 per cent?

A You are applying one conclusion from the past interest rates; the fact that they have gone up over an eighteen year period.

Q Right.

A What I was using was an average and I would estimate that it would be around 4 per cent.

Q You didn't answer my question.

Using your own guide, which you have over the last eighteen years, and we apply that guide to the 7½ per cent interest in 1974, by 1992, applying that one guide, just stick with that, the interest rate would be 14 per cent?

A It's a question of semantics. You're drawing a different conclusion from figures. It's not a question of a guide.

Q It's a question of mathematics, isn't it? And that's what you majored in.

A No, you're drawing a conclusion from numbers. In [234] other words, the interest rates have gone up over the last eighteen years, but that is not a guide to the fact that they will go up over the next eighteen years.

Q All right, sir.

A I think "guide" is the wrong terminology.

Q So you would say that if interest rates have gone up 200 per cent in eighteen years and if the same guide is applied to the next eighteen years, that doesn't mean a 200 per cent increase?

A If I start with the guide that interest rates have gone up and just use that one criterion, that they have gone up 200 per cent over the last eighteen years, and use that as a basis of what is going to happen over the next eighteen years, then clearly they will go up another 200 per cent and they will keep doing that.

Q All right. Now, one other point. In Exhibit C, again you did not take into effect — you said that the increase in salary to \$27,000 does not take into effect inflationary spirals?

A That is correct.

Q And likewise you say that the figure of \$2,150 for living expenses does not take into effect inflationary spirals?

A Correct.

Q Now, why, sir, since you are giving increases in pay,

why would it not be reasonable to expect that there would [235] be a concomitant increase in the cost of living?

A It is very reasonable to assume that there would be an increase in the cost of living.

MR. MOLLER: Thank you, sir.

MR. DOUGLAS: Your Honor, I have just one question, which I think will help clarify things a little bit.

BY MR. DOUGLAS:

Q Assume that you had a 6½ per cent inflation rate and that you had an 8 per cent investment rate, and you were trying to figure out across the board what Nancy Feldman's 1971 value of future earnings would be. How would that come out?

A I would use a 1½ per cent as a net discount rate to determine the value as of 1971.

Q But if you took her salary and increased that by inflation and you took her living expenses and increased that by inflation, and you took an 8 per cent investment rate and you recognize that there is 6¼ per cent inflation, where would you come out?

A I would not come up with an identical result. I would come up with something very close, but there would be some other factors reflected.

Not everything will increase at the same rate. But basically I would come up with a very similar result to what [236] I came up with. Any differences would be negligible.

MR. DOUGLAS: That's all.

MR. MOLLER: I have no further questions.

(Witness excused.)

* * * * *

[239] AFTERNOON SESSION

THE COURT: Are we ready?

MR. HORTON: Yes, your Honor.

Your Honor, I would like to call as my first witness
Mrs. Diana Donald.

DIANA DONALD, called as a witness, being first duly
sworn, was examined, and testified as follows:

THE CLERK: Will you please state your name for
the Court.

THE WITNESS: Diana Donald.

THE CLERK: And your address, Mrs. Donald?

THE WITNESS: My address is Main Street, Farm-
ington.

THE COURT: O'Donnell?

THE WITNESS: Donald. Just like the first name.

DIRECT EXAMINATION
BY MR. HORTON:

Q Mrs. Donald, could you state where you went to
school?

A Yes. I attended and graduated from Mt. Holyoke
College, magna cum laude, and I was elected to Phi Beta
Kappa.

I then received a scholarship to the Massachusetts
Institute of Technology, and I received a Masters degree in
[240] city planning there in 1958.

Q You received your Masters degree in 1958?

A That's correct.

Q What did you do after that?

A Following that I worked as a planner for the City
of Ithaca, New York. Later with the City of —

Q Perhaps if you go a little slower.

A Oh, you want me to go slower?

Q A little slower.

A I'm sorry.

Then with the Pittsburgh Regional Planning Association as a planner.

Then I came here in 1960 and served as a Senior Planner with the Hartford Commission on the City Plan.

In 1961 I went into consulting business for myself in Farmington for three years. In 1964 we formed the firm of Brown, Donald & Donald, Planning Services — of which I am a principal member and have been for the past ten and a half years.

Q And what does this firm do?

A We do a variety of planning services for both municipal and private clients. We have about thirty-five client municipalities in Connecticut and Western Massachusetts to whom we offer continuing services; that is, we operate as if we were their town planner; preparing and commenting [241] on zone change situations, subdivisions, changes in their comprehensive plan, urban renewal projects and progress, and so forth.

We also do the planning work related to major comprehensive plans and studies, urban renewal projects, environmental impact statements, the zoning, subdivision, and new town planning of various kinds.

Q How large is your firm?

A We have twelve employees, counting the principals, at the present time. We vary in size, as many small firms do. We have been as high as twenty-three and as low as five or six.

Q Have you heard of the planning firm of Cogen, Holt & Associates?

A Yes.

Q Would you say that your firm is similar to their firm?

A I think that each firm has a certain amount of its own specialty. We may do a little more of the private development type of design work, but we both do municipal services and so on. And I would say that they were probably as similar as you would find in a state this small.

Q What professional organizations do you belong to?

A I am a member of the American Institute of Planners, which is the professional society for planners; a full member.

[242] And I'm a member of their national Board of Directors, the twelve Board of Governors. There are twelve governors and I am one of these. I represent District 1 of the Society, which includes the New England States, New York State and New Jersey.

Q And you are the delegate from Connecticut?

A Yes. I'm the delegate from that entire region.

Q And where is this association based?

A In Washington, D.C. It is a national organization.

Q Do you know what a research associate is?

A Yes.

Q What is it?

A Well, in our firm a research associate is someone with a Bachelors degree and the ability to cooperate and work under a professional planner to prepare an individual piece of research related to a plan or an ongoing management program that we may be doing.

For example, we might ask a research assistant to assist in preparing a cost benefit study on a recreation program for the Town of Bloomfield, say. Then the professional in charge of that would outline the material that they felt was appropriate for the research associate to be finding and the research associate would go ahead and find this material and prepare a research report.

[243] If the person has a certain amount of ability the professional in charge might let that person, in fact, write the report and perhaps prepare the entire piece of material. But it would be supervised by somebody in our firm who would be classified as a planner.

Q Do you have a research associate at this time?

A We do not at this time.

Q Have you in the past had research associates?

A Yes. We've had at least six or seven over the course of the ten years that we've been in operations. Sometimes as many as three at a time, depending on the nature of our work during that period.

Q Now, have you been personally involved in hiring research associates in your firm?

A Yes.

Q And did you review since yesterday your payroll records concerning research associates?

A Yes, I did.

Q And would you say that your pay scales are substantially competitive with other people in this field in Connecticut?

A Yes, I would say so.

Q And did you bring them with you?

A Yes, I did.

Q All right. Perhaps you would get them out.

Now, would it vary according to whether the person [244] had only a Bachelor's degree or a professional degree beyond that?

A Yes, it would, indeed.

Q Now, what is that professional degree that —

A Well, in urban planning there are a couple of degrees which would qualify one to call one's self a professional urban planner: A Master in urban studies, a Master in city

planning, a Master in regional planning are typical degrees, depending upon the graduate school, what the degree is granted.

Q Having reviewed your payroll records for, say, the past five years, how much have you started research associates at who only had a Bachelor's degree.

MR. DOUGLAS: Your Honor, I object, unless the time is specified.

THE WITNESS: I can specify the time.

A The last research associate we hired had a Bachelor's degree from Smith College and we hired her at \$6,500 a year. That was in 1969.

Q (By Mr. Horton) Perhaps you could name others.

A Do you want me to give the name?

Q No. Just give the cases.

A I have it. I don't think she would mind.

Q No. I don't think that is necessary.

A All right.

[235] Q Do you have others?

A Yes. Now, that was the last person hired.

Q What happened to her pay scale as she stayed with you?

A Yes. She stayed with us, and I think I had probably better refer deliberately to the date here because I don't want to make a mistake. But she was with us somewhat over a year. She was a very competent person and at the time she left she was making \$7,020 a year.

Q Now at this time, going through all of the professional employees at your organization, what is the range of pay of the non partners?

A Of the non partners?

Q Yes.

A Pay for the non partners ranges between \$10,000 and \$16,000 a year.

Q Now, if you were to hire a research associate today in today's job market how much would you expect to have to pay for him? Her or him.

A Probably \$8,500 or so.

Q And after this person had been with you for five years how much would you expect to have to pay this person?

A In today's dollars, assuming that you can compress five years into now, I suppose that after five years you would expect to be paying this person twelve to fourteen [236] thousand, depending on how competent they were.

Q And after ten years with your organization, ten years of experience and a Bachelor's degree, and assuming doing a good job, how much would you expect to have to be paying this person?

MR. DOUGLAS: Your Honor, I object, unless there is some indication of experience as to what someone has been paid at for ten years.

THE WITNESS: I could give an example, a concrete example, because we have such a person with us.

THE COURT: All right.

THE WITNESS: She doesn't now carry the title of research assistant, however.

BY MR. HORTON:

Q Has she been promoted?

A Yes, she's been promoted to planner.

Q And she has how much experience?

A She has seven years of experience with us and a Bachelor's degree.

Q And how much is she being paid?

A And she's being paid \$15,000 a year.

Q Now, how many partners are there in your organization?

A Well, there are three principal people in the firm. [237] We are incorporated, so we don't really call ourselves partners. But we operate as if we were, because it is a small firm.

Q And how much were they paid last year?

A Each of us had a take-home salary of \$16,000 a year. Then we also divided the profits of the firm.

Q Do you subscribe to any periodicals that indicate the state of the job market?

A Yes. We are members of the American Society of Planning Officials, which is an organization devoted to preparing research reports and so forth for planning officials and practicing planners; that is, planning commissioners as well as professional planners. And they put out a bulletin they call "TAB".

Q Do you have a copy with you?

A Yes, I have several copies here. I have about the last three or four months.

Q And have you reviewed these?

A Yes, I have reviewed them.

Q What do they indicate as to the state of the job market?

A The state of the job market in planning is very poor for people seeking work; extremely poor.

Q And have you noticed this of your own personal experience?

[238] A Yes, indeed.

Q And how have you noticed it?

A Well, I have here also the last three months of gratuitous resumes that have simply been sent us in the mail by young people seeking work. We've been getting an average of one a week. I have about eighteen of them here in

this file; people with both Master's degrees and without, who have background of some kind or interest in planning, urban studies, site planning and this kind of related field.

Q How do these leaflets you've referred to indicate that this is a poor job market for people seeking a job?

A For example, in the last three or four months there's hardly anything listed in Connecticut at all; only a couple of things listed in Massachusetts, a couple of listings in New York State, and so on.

Q Now, are you familiar with the Washington, D.C. job market?

A To some extent, yes.

Q Could you explain how you are?

A In my capacity as a member of the Board of Governors of the American Institute of Planners I do visit Washington about every two months as a member of the Executive Committee. And I am involved with the staff of the national staff there, some of whom are professional planners in the Washington area. So I have some rapport with what's going on there.

[249] Q And is the Washington job market similar to the Connecticut job market?

A I would say it was similar, yes.

MR. HORTON: No further questions.

CROSS-EXAMINATION

BY MR. DOUGLAS:

Q Mrs. Donald, you've been quite successful in your career, haven't you?

A I think so.

Q And could I inquire what your total earnings were from your firm last year?

A Yes. It's easy to remember since my husband and I

just filed a joint return. Our two incomes in take-home salary, plus the profits of the firm, we filed an income tax of forty-four thousand last year, for income.

Q I was thinking of your own earnings from the firm.

A Well, we divided the profits equally among the three principal members. And this varies considerably because of the accounting, as I'm sure you know. We spread our profits around over a series of years so that any one year is not going to be too large, and so on.

This is something our accountants do for us and I couldn't tell you precisely what I earned last year in profit. I can only tell you what I paid taxes on.

THE COURT: Is your husband a partner?

[250] THE WITNESS: Yes, he is.

THE COURT: I see.

Q (By Mr. Douglas) You don't recall, what, in addition to the sixteen thousand, was your share of the earnings?

A Well, the addition would be thirty-two thousand minus forty-four thousand; or what's that, twelve? Yes, twelve thousand.

Q That would be in addition to the sixteen?

A That would be my husband's and my profit share. So mine was 6,000.

Q So your total take, so to speak, from the business now would be 22,000?

A This last year, yes.

And as I say, this is an accounting thing. It may have been larger this year, it might have been nothing, or it might even have been minus. And in some years it was.

Q And this is kind of a depressed period?

A Yes, it is. Extremely so.

Q And your earnings have been higher?

A They've been higher and they've been lower, right.

Q Now, Mrs. Donald, you don't mind my asking this question, I'm sure, but how old are you?

A I'm thirty-nine.

Q Thirty-nine.

A Not like Jack Benny. I really am thirty-nine.

[251] Q I believe that, if not younger.

And you worked in this field for how long?

A Fourteen years.

Q Fourteen years. And some years you've made yourself more than \$21,000, is that right?

A That's correct.

Q Have you raised a family?

A Yes. I have two children, ages twelve and ten.

Q Did you take time out to get them started, or were you able to keep on with the work?

A I took six months off completely when my first child was born, and after this birth of my second child I returned to work full time. During the eighteen month period between my two children's births I worked part time.

Q You haven't found being a woman a handicap in your profession, have you?

A Not really, no; to be honest.

Q The record doesn't show it, certainly.

Do you know the salary scales at the American Institute of Planning in Washington?

A Well, there aren't really any salary scales. You mean of the people they employ?

Q Yes. Could you tell me —

A I can tell you what the Executive Director makes. I cannot tell you what the staff make. I don't really know.

[252] Q Do you know what the Executive Director makes?

A Yes. He makes 30,000.

Q How old a man is he?

A He's forty-one or two.

Q How long has he been in planning?

A He was a planner for the City of Atlanta, or the Atlanta Region, I'm not quite sure which, prior to going with the National League of Cities, where he was Assistant Director there for a couple of years before he came to the American Institute of Planners as their director.

And he has been a professional planner or with professional planning societies and situations all of his career, I think.

Q Mrs. Donald, when you hired the research associate in '69 at \$6,500, I gather that person stayed with you for a little over a year, was that your testimony?

A That's correct.

Q And did she get a promotion in salary during that period?

A Yes, she did.

Q What was that?

A It was a little over \$500.

Q So that at the time she left she was making \$7,000?

A Yes. I believe the figure I quoted and the figure I found in here was 7,020.

[253] Q And when did she graduate from college?

A She had graduated from Smith College immediately before we hired her. She was hired in June of '69, so she was a '69 graduate of college.

Q That was with an AB?

A Yes.

Q And how many of your non partner associates do you have?

A We have two planners, associate planner, a graphics—

Q Excuse me.

A In just a minute I'll answer you. I want to be specific. Six.

Q Six?

A Yes.

Q And what are they engaged in? Are they specialists of some kind?

A Some are and some are viewed as generalist planners, the same as the partners so-called.

We have two urban planners who do much the same work as the three partners. They have their own client municipalities, their own jobs and contracts for which they are responsible.

We have a site planner, a landscape architect who does specific work for private developers. And he again is [254] a professional and is responsible for his own specialty.

We have a graphics designer cartographer who has a Bachelor's degree in fine arts who designs our publications and does a great deal of map design and that sort of thing. He is also considered a professional.

And so we do have some specialists.

Q What, for my ignorance, is a cartographer?

A A map maker.

Q I see. Any special kind of maps?

A Map designer, really. Not just draftsman.

Q Now, how do you account for the fact that the job market is tight for planners and that you haven't hired anybody in quite a while as a research associate?

A I think the simplest way to account for it is to say that there's no federal grant money and local communities have been using federal money and state grant money to pay for planning.

Some communities have begun to recognize that they need planning badly enough so that they are willing to pay

out of their tax dollars for it. But traditionally over the course of the last twenty years or so it has been the 701 grant process, 701 of Title 7 of the Housing Act, and that availability of grant money that has completely financed the planning profession in terms of its work with municipalities.

So to be perfectly honest with you, it is the drop-
[255] off in grant money that's done it.

Q When did that start? Did that start with the Nixon administration coming into office, or when was it?

A No. As a matter of fact, in Connecticut it started before that. Because the Connecticut policy, about four years ago, was to take the 701 money which was originally being distributed to municipalities directly for planning work and use it to finance the Department of Community Affairs. And it was used for financing technical services to towns by the Department, by DCA, rather than going directly to the towns.

So that they could hire anybody they wanted to; either hire their own planners in town hall or hire planning services.

So that in Connecticut the immediate dropoff in the need for planners, certainly in the private consulting sector, has been really at least a five or six year thing and not a slow, slower spinoff of the Nixon administration.

Q I take it you think that that dropoff is kind of an unwise policy?

A I think it's sort of a two-edge thing. I think it's going to be very good for municipalities to recognize that they need planning services and that it's something they ought to budget for.

Q They will realize that the present shortage of funds is really to their detriment?

[256] A Well, yes. But I think that it's important for people to have to pay a little something to get something, too.

Q And maybe if they feel that way then they will increase the available funds?

A I think the towns are beginning to do this. We see signs of revenue sharing funds going to planning services, and so on and so forth. I think this is happening.

MR. DOUGLAS: Thank you, Mrs. Donald.

That's all I have.

BY THE COURT:

Q What is there or is there a difference between this town planning work that you do and legislative research?

A There could be a difference, yes, in terms of the type of research being done, I think.

Q Well, do you understand that this other firm, Cogen, Holt, the services that they perform for municipalities are not directed to town planning in the sense of urban development and use of land, but more to all of the town functions and coordination with federal and state programs and legislation?

A Yes.

Q There is a difference?

A Yes. I think there is.

[257] Our firm does that kind of work also. We do prepare fiscal management programs for municipalities and we prepare their grant applications, and we try to help them prepare capital improvement programs.

I think that the work is similar, although it may not be precisely the same.

Q Your work is oriented more toward the use and management of the property of the city and within the city?

A We do both, actually, yes. We do that. We do.

We also do research for towns. And a good deal of it in terms of cost benefit and that sort of thing.

THE COURT: All right.

MR. DOUGLAS: Thank you, Mrs. Donald.

MR. HORTON: Thank you, Mrs. Donald.
(Witness excused.)

MR. MOLLER: Dr. Curran.

[258] WARD S. CURRAN, called as a witness, being first duly sworn, was examined and testified as follows:

THE CLERK: Will you please state your name.

THE WITNESS: Ward S. Curran, C-u-r-r-a-n.

THE CLERK: And your address, Mr. Curran?

THE WITNESS: 6 Stoner Drive, West Hartford, Connecticut.

DIRECT EXAMINATION
BY MR. MOLLER:

Q Dr. Curran, at my request did you prepare this curriculum vitae?

A I did.

MR. MOLLER: I have given a copy to Mr. Douglas.
Do you object to this?

MR. DOUGLAS: No.

(Defendant's Exhibit E: Curriculum vitae of Ward Curran, received in evidence.)

MR. DOUGLAS: Your Honor, could I ask would it be permissible for Mr. Malasky to sit at counsel table with me?

MR. MOLLER: I have no objection.

THE COURT: Sure.

MR. DOUGLAS: Thank you.

[259] BY MR. MOLLER:

Q For the record, Doctor, I don't want to go all through Exhibit E, but where did you obtain your Doctor of Philosophy?

A Columbia University, 1961, sir.

Q And what is your present position?

A Presently I am Professor of Economics and George M. Ferris Lecturer in Corporation Finance at Trinity College. I'm also Visiting Lecturer at Yale University.

Q What has been your most recent book?

A Well, the most recent book is "Principles of Financial Management", 1970, McGraw-Hill.

Q And what is your background as far as the economic circumstances of a person as far as what a person makes, what he or she spends that would appertain to the problem respecting the loss of earning capacity of Mrs. Feldman?

A Well, you mean my particular background?

Q Yes.

A Well, my particular background happens to be that I have done two or three of these kinds of calculations in the past for attorneys. I have used data which I use all the time in calculations and in economic courses.

I'm quite familiar with the material which comes from the Department of Labor, the Bureau of Labor Statistics, and I try to use those kinds of materials which come closest to reflecting the circumstances of the deceased in question.

[260] Q All right. And at the request of my colleague, Attorney Horton, did you prepare a report on the value of the life calculation?

A I did.

Q Of Mrs. Feldman?

A I did, sir.

MR. MOLLER: Could this be marked for identification, your Honor?

THE COURT: All right. Exhibit F for identification.

(Defendant's Exhibit F for identification: Report of Ward Curran.)

MR. MOLLER: This is the same report I furnished to Mr. Douglas. Since Dr. Curran will be testifying from it, I think it would be of aid to the Court if I could make it a full exhibit.

MR. DOUGLAS: Your Honor, I really think that I would have to object to that in that I received this rather detailed report about five minutes ago.

I have no objection if the witness wishes to refer to it, but as an exhibit now —

MR. MOLLER: I'll withdraw the offer at this time.

BY MR. MOLLER:

[261] Q Showing you Defendant's Exhibit F for identification, that is your report?

A That is correct.

THE COURT: Do you expect this witness will testify to the substance of what is in that report?

MR. MOLLER: Yes, your Honor.

THE COURT: All right.

Q (By Mr. Moller) Were you here in court this morning when Mr. Malasky testified?

A I was.

Q And were you here in court yesterday when Mr. Bourke testified?

A I was not.

Q Well, were you informed that Mr. Bourke indicated

that after obtaining the top of his legislative career, that he would probably go into private practice?

A I was so informed, yes.

Q And were you here when Mr. Cogen testified that he also went into private practice?

A I was not here when Mr. Cogen testified.

Q But you were so informed?

A So informed, yes.

Q All right. Now, basically at what starting salary did you begin your computations with respect to Mrs. Feldman?

A I began with a \$10,000 per year salary in 1971.

[262] Q And would it be reasonable to assume, within the bounds of reasonable economic certainty, that she would have yearly increases?

A Yes, she would.

Q And what would be reasonable to assume?

A Well, what is reasonable to assume is, in my estimation, \$500, approximately, per year.

Q And how did you base that?

A I based that assumption in part on the fact that she was leaving her position in 1971 at an income of \$10,000 per year approximately, and that she would be able to obtain a similar position at \$10,000 per year.

Then I proceeded to assume that basically an individual would experience some increases in income in the early years of their career and that this income increase represented approximately \$500 a year, which is not too different from what a scale one might assume for, say, federal work or something of this nature.

Q Are there recognized labor reports, Doctor, with respect to the earning capacity of women — and most particularly let's say to be more specific, such as Mrs. Feldman who has a Bachelor's degree?

A Well, it is difficult to specify specifically the occupational classification in this instance. What there are available, however, are income figures for women with incomes [263] with four years of college. Now, these come out periodically.

The figures that I have for the United States, for the northeast corner of the United States, are figures from the 1970 census. And they would be salaries as of 1969.

A mean income of a female with four years of college, twenty-five to thirty-four years of age, in 1969 was \$5,316.

Q Would you repeat that?

A \$5,316. This is from the United States census.

Q Now, is there a progression after one — let's say a Master's degree or a PhD?

A Well, there is a progression. A master's degree with five or more years, or at least five or more years of college, mean income of a female twenty-five years of age in 1969 was \$6,547.

Q And how about with a PhD?

A A PhD, I have no figures as such.

Q I take it that this figure, as far as median income for a female, increased, we will say, from 1969 on, did it not?

A Yes, it did.

Q So what is the next year and figure that you used?

A I increased the income of the deceased \$500 per year for the years 1971 through 1976, so that the gross income would be \$12,500.

[264] Q During this period where there was an acceleration and growth of income, what was the situation as far as the Consumer Price Index?

A Well, the Consumer Price Index in this particular period of time rose — let's see if I have a figure. I want to double check it.

The Consumer Price Index in 1960 was 88.7. By 1965

it was 94.5. In 1971 it was 121.3. This represents a 2.89 per cent rate compounded annually from the period 1960 to '71; and a 4.25 per cent rate compounded annually from the period '65 to '71.

Q Now, exactly what does that mean as far as —

A Well, it means that the market basket of goods and services purchased by an individual would have rose approximately 2 per cent, almost 3 per cent a year from 1960 to 1971; approximately 4 $\frac{1}{4}$ per cent from '65 to '71.

Q All right. Now the other side, what was the situation as far as interest rates?

A Well, the average yield on three month treasury bills, which I refer to and most economists refer to as the closest approximation of the so-called risk free rate, was —

MR. DOUGLAS: Your Honor, could I just ask, I have no objection to the witness referring to this, but it would help if he would indicate the page that he is looking at.

[265] MR. MOLLER: We are on Page 2.

MR. DOUGLAS: Thank you.

THE COURT: Doesn't anybody want to help me?

MR. MOLLER: I think, your Honor, I would offer Exhibit F. I think it would be a lot easier to follow.

THE COURT: If he is going to testify to the substance of it, if it is that report, I would like to receive a copy.

THE CLERK: Now a full exhibit, your Honor?

THE COURT: Mark it a full exhibit.

MR. DOUGLAS: Your Honor, I do object.

THE COURT: All right.

(Defendant's Exhibit F for identification: Received in evidence.)

MR. MOLLER: For your Honor's purpose, we are on Page 2, the second paragraph. The last question leads to Paragraph 3.

BY MR. MOLLER:

Q Let me ask you this: What is a risk free investment?

A A risk free rate would be a rate of return on an investment in which both the principal and the interest would be virtually certain. The closest one can come to this, in my estimation, is a three month treasury bill rate.

Q And what has happened —

[266] A Excuse me. There are some people who might argue, too, that a risk free rate could be in terms of a savings account, which is insured by the federal government.

Q All right. And what has happened as far as the risk free rate from 1960 to 1974?

A Well, the risk free rate fluctuates. It was 2.928 in 1960. By 1965 it had risen to 3.954.

By 1970 it was 6.458. In 1971 it fell to 4.384. By the end of 1973 it was at 7.04 per cent. And I have a figure which is reasonably current here in my files, if you would like to put it on as an exhibit.

Q Yes.

A The risk free rate for ninety day treasury bills in April, April 12th, is approximately 8.57 per cent.

Q 8.57 per cent?

A That's right.

Q So that means that in April of 1974 a reasonably prudent investor could invest in the so-called risk free investment and expect a return of 8.57 per cent?

A In the ninety day treasury bill, sir.

THE COURT: 8 point what?

THE WITNESS: 8.57 per cent in the ninety day treasury.

Q (By Mr. Moller) Now, if we could get over to Page 4 and I would like to hit for just a minute the cost of sup-[267] porting one's self.

I am referring, your Honor and Mr. Douglas, to the bottom of Page 4.

What is the U.S. Department of Labor 1972 handbook of Labor Statistics, Dr. Curran?

A Well, this is a handbook put out by the Bureau of Labor Statistics which actually is a summary work on the — well, it presents basically summaries of many of the kinds of statistics which the Department of Labor publishes.

Q Showing you Defendant's Exhibit D for identification, is that a page?

A That is correct.

Q Does this include the information relative to the cost of the standard of living in the Washington, D.C. area?

A It does.

Q And did you use this in making your computations?

A I did, sir.

Q As to the cost which would be reasonable for Mrs. Feldman to spend?

A Correct.

MR. MOLLER: I offer this as a full exhibit.

MR. DOUGLAS: Your Honor, could I inquire if we are going to have more exhibits introduced and marked?

MR. MOLLER: Yes. Excuse me.

[268] MR. DOUGLAS: I have requested or I had understood that we would be getting copies of these exhibits in advance.

We had given, I think, copies of our exhibits to Mr. Moller the day before the trial started and it is just very difficult to deal with these exhibits.

MR. MOLLER: That's interesting. I did not get Mr. Douglas' Exhibit C, nor did I get any information whatsoever from Mr. Malasky, and I have provided you with a full report prior to putting Dr. Curran on the stand.

This has been here in court all day. I think I have laid a proper foundation.

THE COURT: What is it?

MR. MOLLER: It is the Bureau of Statistics, the Department of Labor statistics for the chart showing where Dr. Curran got the figure of \$16,345.

THE COURT: May be admitted.

(Defendant's Exhibit F for identification: Received in evidence.)

BY MR. MOLLER:

Q Now, is this a basic starting point for a determination of what it costs one person to live?

A This is a basic starting point, that is correct.

[269] Q Now, of the \$16,345 how much must be subtracted from that for federal income tax?

A Well —

Q Or let me put it this way: What is left after taxes?

A \$12,002 represents the consumption items in that particular table; that is, food, housing, transportation, clothing, personal care, medical care, other family consumption, miscellaneous family consumption.

Q Then was there an additional item set forth for gifts and contributions?

A Yes. \$941 was an additional item for gifts and contributions, life insurance, occupational expenses.

Q Now, does the Department of Labor publish certain equivalency scales for less than four, a family of four?

A They do, sir.

Q And what scale did you use in this case, Dr. Curran?

A Well, I began by looking at the scale for two individuals, husband and wife, under thirty-five years of age. And the scale is 49 per cent.

In other words, you apply the scale factor to any one of these numbers. You apply it in this case to the consumption item of \$12,002.

Q So then you come up with a figure of \$5,881?

A That is correct.

[270] Q And then as far as the contributions of \$461, correct?

A Yes, sir.

Q Now, from the fact that Mr. Feldman was earning between 18,000 and 21,000, and Mrs. Feldman was projected at 11,500, is a higher standard of living scale reasonably sound, economically, in this case?

A It is my opinion that it is, yes. Definitely.

MR. DOUGLAS: Your Honor, I move to strike the answer as giving a legal conclusion.

THE COURT: Overruled.

Q (By Mr. Moller) Now, starting with Mrs. Feldman's earnings of \$10,000 a year, would you explain how you determined what her actual loss of earning capacity in a year would be, Dr. Curran?

A Well, I began with the gross income of \$10,000 a year, which is the 1971 figure. I subtracted from it a personal exemption, an individual personal exemption under the assumption that she would, in effect, have one of the two personal exemptions.

I made note of the fact that it was actually \$675 in 1971. But it was changed. So I gave it the \$750.

I subtracted one-half of the 15 per cent standard deduction, or \$1,500, and gave her \$750. This, in effect, was the income before taxes.

[271] Then I used the tax tables for the year to determine — and this I think is the important point to make this clear — I made the assumption that her income would be taxed as though it were the only income filed under a joint return; the effect of which would be to lower the taxes compared to what they would be if you had included her husband's income in. But at that particular year I took it as the 10,000 and assumed that the taxes would be for her alone, but on a joint return basis.

Q So that's the figure of \$1,490?

A 1,490, yes. It comes from the tax tables. It comes directly from the table that it used for calculation of taxes by any individual when they fill out their 1040.

MR. MOLLER: Does your Honor have that figure at the bottom of Page 5, the 1,490?

Q And that figure for taxes is based on her income alone?

A It is based on her income alone. But the tax tables are for a married couple filing a joint return. Therefore, you are using the lower rates.

Q So what was the total income that would be a total income available for Mrs. Feldman's consumption?

A \$7,010, plus the deductions of \$1,450, giving you 8,460.

Q Then would you explain the rest of the figures on [272] that page, Dr. Curran?

A Yes. The rest of the figures on that page, you would have to go to Page 6 for the calculation.

What I did was to make use of the scale factor for an individual under —

Q What do you mean by scale factor?

A Well, it would be similar to the factor that was used with respect to two individuals without children, where I

used 49 per cent. Now what I'm saying is that the scale factor that the Department of Labor recommends is .35 per cent of the consumption allowance that would be, what shall I say, available or would be used by a four-person family, husband and wife and two children, on a higher standard of living.

Q And that is how you got the 4,206?

A Yes. That would be the consumption of an individual with a higher standard of living and it would exclude certain items, such as life insurance and occupational expenses. It would be based upon the \$12,002, which is food, housing, transportation, clothing, personal care and medical care.

Q And that doesn't include recreation?

A It does not include recreation. And in accordance with *Floyd vs. Fruit Industries* I made an estimate on Page 7 of recreation expenses. The best data which I could [273] find comes from the Department of Commerce in which '71 recreation averaged about 6.4 per cent of personal consumption expenditures, preceded with 35 per cent of this figures 2.24. 2.24 of \$12,002 is \$269. And added it back in to arrive at \$4,529, which is the amount representing the net loss in earning capacity after maintenance of life and giving back a recreational allowance.

Q So that of a year of earnings of \$10,000 Mrs. Feldman, according to your opinion, Mrs. Feldman's loss in earning capacity would be \$4,529?

A That's correct.

THE COURT: I missed part of the question. I heard 4,529.

That is after deduction of taxes and living expenses?

THE WITNESS: That is correct. And adding back recreation.

BY MR. MOLLER:

Q Now, would you explain your chart on Page 8, Dr. Curran?

A Okay. The table on Page 8 takes the gross income and incrementing it by \$500 per year from 1971 to 1976, giving you \$12,500.

I used the same standard deductions. 15 pe. cent is the maximum; or \$1,500 — the assumption being that \$750 [274] was the same personal exemption. This is the maximum as of today.

Then this gave me income before taxes of 85 up through 11,000.

I then calculated the additional income taxes using the same tables of income tax calculations that I used preceding in the 1971 example; that is, using in effect a joint income table using those rates that would apply for two people, but assuming that Mrs. Feldman was the sole earner.

Q So, in other words, if Mrs. Feldman had carried out her intentions of working for five years in Washington and then starting to have her family, these figures: 7,010, 7,400, 7,790, 8,180, 8,570 and 8,960 would represent her lost earning capacity for those five years?

A It would represent her net income for those years.

Then what I did was to, in effect, decrease that amount by the consumption allowance of \$4,200 added back the recreation. It is the bottom line.

Q Excuse me. So that actually her loss of earning capacity would be starting with the figure 4,529 through 6,479?

A Yes, sir.

Q Now, there is testimony that Mrs. Feldman would take some time out for child rearing, but that she wanted [275] to go back to work.

Did you go further and compute what her net loss in earning capacity would be if she did go back to work after taking time out to raise or to start two children?

A Well, what I did was to exclude her from the labor force for ten years, on the assumption of two children, and it requiring a full day of school if they were spaced four to five years apart, would be approximately ten years.

Q And those figures, I take it, appear on Page 9?

A Well, no. On Page 9, then, what I did was to put her back in the labor force under the assumption that her skills had been maintained at the salary at which she left; \$12,500.

Q And then got her up to what rate?

A I got her up to \$16,000 in 1994.

Q What type of work did you envision her doing?

A I envisioned her doing essentially what she would be doing today.

Q Now, moving on to Page 10, did you in Pages 10 and 11 — in order to commute a loss in earning capacity to present value, in what manner do you consider a discount factor?

A A discount factor would be a rate of interest allowing for the time value of money. That is, in effect, a dollar received a year from today is not worth a dollar today because [276] cause you could invest it at a rate of interest.

Since we are dealing here with a present value of a sum which could be invested at rates which are at least similar or close to current rates of interest, making due allowance for the fact that there are differences in maturities of obligations so that the treasury bill rate may not be the rate one wants to put the money in, he may want to put it into a 7½ per cent savings account or he might want to put it into a twenty year government or twenty year corporate bond, what I did was to take due account of the current rates of interest and used a discount factor which was slightly below those rates.

That is, two flat rates: 7 per cent, first, and then 6

per cent. Then I arrived at the present value of the net loss in earning capacity under two different sets of assumptions — I mean two different interest rates: 7 per cent and 6 per cent.

I got the net figure of \$76,443 and then \$85,958, assuming that she worked until sixty-five years of age.

Q Now, Dr. Curran, with respect to the way money increases, if one were to invest one dollar at 7 per cent — let's take the 7 per cent interest figure — how long would it take for that dollar to double?

A It takes about ten years.

Q And then if we invest the two dollars, I take it that [277] would double in another ten years?

A That's correct. Approximately.

Q So that in forty years the one dollar would be worth sixteen dollars?

A In forth years?

Q In forth years.

A In forty years, yes.

Q What would you consider the present rate for risk free capital today?

A Well, if you assume the three month treasury bill as the base, then 8.57 per cent is the approximate rate today.

If you wish to argue, and I think you can, that you might want to put it in a lengthening longer maturity, then you could have a savings account with Society For Savings, a four-year account, at 7½ per cent.

If you wish to assume a slightly higher rate risk, which would mean just a little bit less than the risk free rate, Triple A Corporate Bonds, many of whom mature within twenty years, are selling at about 8 per cent, new ones at par — I mean, I'm sorry, 8.23 per cent at about par.

In other words, a thousand dollars invested today in

a twenty-year Triple A Corporate Bond, new issue, would yield about 8.23 per cent.

Q And in your opinion if Mrs. Feldman did work to [278] age sixty-five, her earning capacity as commuted to present value at 6 per cent would be \$85,958?

A That's correct, sir.

Q And if we use the higher figure of 7 per cent, it would be \$76,443?

A That is correct.

MR. MOLLER: Thank you.

You may inquire.

MR. DOUGLAS: Your Honor, could we have a recess, please, while I look at this?

THE COURT: Recess.

(Short recess.)

[279] CROSS-EXAMINATION

BY MR. DOUGLAS:

Q Doctor, is it your testimony that after sixteen years Mrs. Feldman would have been earning \$12,500?

A That's what I testified, yes, sir.

Q And on what is that based?

A It is based on the assumption that she would probably come close to maintaining her skills and would enter at the similar level, or roughly similar level when she left the profession for child rearing.

Q And how did you arrive at your \$500 a year figure?

A Well, the \$500 a year figure is based partly on the argument that we have minimum scale increases —

Q Is that on Page 1?

A No sir, it's not on Page 1, as such.

The \$500 figure was based upon the argument that a person's reasonable increase in salary would be of a

neighborhood of \$500. This is based further on the assumption that's an aid in the calculations that we are not allowing for an inflationary increase in income at all and we are not allowing for an inflationary increase in expenditures.

Q Doctor, where did you arrive at your \$500 figure though?

A The \$500 figure is a minimum figure based upon two facts:

[280] One, the testimony from — I can't remember the name of the witness now — that said between 500 and 1,000 —

Q If you can't remember the name of the witness —

A I'm sorry, I'm sorry.

It is based simply upon the assumption that a \$500 increase in salary represents my judgment as to an incremental increase that would be reasonable under the assumption that no individual would be able to — or an individual would be able to have a reasonable increase of \$500 a year without taking into consideration any inflation.

Q Well, \$500 would be reasonable for Mrs. Feldman, is that right?

A That's correct, sir.

Q Were you here in the courtroom when Mr. Feldman testified?

A I was not, sir.

Q Were you here in the courtroom when Mr. Bourke testified?

A I was not, sir.

Q Were you here in the courtroom for Mrs. Feidelson's testimony?

A I was not, sir.

Q Have you read the deposition of Mrs. Rodmann?

A I have not, sir.

Q Are you aware of the fact that Mrs. Rodmann testi-

[281] fied that in 1971 in Washington, D.C., where Mrs. Feldman was planning to go, she would have been qualified for \$11,500 salary?

A I have only heard this. I have not read it, no sir.

Q Then how do you base your testimony that \$500 is an appropriate increase, when you haven't heard the testimony or read the deposition?

A Well, 500 —

MR. MOLLER: Excuse me.

I object, your Honor. This question has been answered. He has answered it twice.

It is now argumentative of how he arrived at the \$500 figure.

MR. DOUGLAS: In all deference, I don't believe I have had an answer, your Honor.

MR. MOLLER: He has

THE COURT: He said, "It's based on my judgment."

THE WITNESS: Yes, sir.

BY MR. DOUGLAS:

Q And what is your judgment?

A My judgment is the \$500 increase in salary represents an increase that one would anticipate getting if that individual were to realize an increase in income based upon [282] a factor which does not allow for inflation. In other words, a real increase in income.

Q Would that be true of all professions?

A I would say that would be — well, whether it is 500 or 600 would be generally true, yes.

Q Across the board?

A I would take that into consideration. I would not answer that question, quite frankly, along those lines. I

would have to take into consideration basically a hypothetical example that you wanted to put in front of me.

Q Would you, as an economist, feel that it is appropriate to predict wage increases and salary increases for one profession to be the same as for another profession?

A No, they would not be the same necessarily.

Q And if Mrs. Rodmann, who is the general personnel director at the National League of Cities, states that this person was qualified for an \$11,500 job in the summer of 1971, do you believe your judgment is to be given credit over hers?

A Yes.

MR. MOLLER: Just a minute, Doctor.

I object to that. He is now asking this witness to pass upon the testimony of someone who has testified in a most conjectural manner.

THE COURT: I will allow the question.

[283] A The qualification is one thing. Actual employment is something else again.

This particular individual was, at the time of her death, in the process of changing jobs. She would have been qualified for a particular position. Whether she would have been employed is a moot point. I therefore chose, in my judgment, to leave her at \$10,000 income.

Q But the fact is you didn't take into account the field in which she was engaged, did you?

A If you will look at the field in which she was engaged and can get for me or obtain for me statistical data —

Q Could you answer the question?

A Yes, I'll answer the question.

The answer is that I looked for statistical data on the field in which she was employed and I found nothing satisfactory.

Q So you made your own personal judgment?

A That's right, I made my judgment based upon the fact that I see in front of me a \$10,000 a year income of an individual. I see in front of me women with four years college training whose salary range from \$4,000 all the way up to \$7,800 or \$7,300 between the ages of eighteen and sixty-four, and within that framework I made a judgment, — it was a judgment — of \$500.

[284] Q Are you a personnal expert?

A I have done that kind of work. I hold a Master's degree in economics and my Master's thesis was in the field of labor, yes.

My PhD degree was in the field of finance and most of my writings are in finance. I have done some work in the field of human capital, yes.

Q Isn't your expertise in fields of rates of return and in fields of finance?

A That's correct. That's my primary interest.

Q Right. And you haven't made a study of the job availabilities or the legislative salaries of people in this field, isn't that correct?

A No, I haven't.

What did you say? I'm sorry. Repeat the question, please.

MR. DOUGLAS: Perhaps the reporter could.

(Question read back.)

A Yes, what I have done is essentially to take the available statistical data on people in this area, or related areas, and make judgments about it; that's correct.

Q What was the area in which you studied?

A I took basically females with four years of college training and I began from that point.

Q Now, they are engaged in a wide variety of activities, [285] aren't they?

A That is correct.

Q And what may apply to one group of individuals would not necessarily apply to another?

A That is correct.

Q I notice that you increased the salaries by \$500 a year for approximately five years, is that correct?

A I increased the salaries approximately \$500 per year from 1971 to 1976, which would be five years, that's right.

No, six years.

I'm sorry. '72 to '76; five years. Okay.

Q And would you expect that in personnel matters the increases would stay constant that way?

A The increases may or may not stay constant. The point is that by increasing it by \$500 per year I took into consideration the fact that I gave her a real increase of \$500 without increasing the cost of maintaining herself during this period.

The answer to your question is that they may not be constant, that is correct.

Q As a matter of fact, isn't it customary for merit increases to increase as the base salary goes on up?

A I can't answer that question.

Q You have no opinion?

[286] A I have no opinion on that.

Q Not made a study of it?

A Not made a study of it, no, sir.

Q Well, without making a study on it, Doctor, how could you conclude and state that a proper estimate is \$500 a year?

MR. MOLLER: I'm going to object, your Honor. This question has been asked and answered many times.

In fact, if counsel will look at his own exhibit, at Plaintiff's Exhibit 16, I think this buttresses the fact because on a GS-10 there appears to be about a \$500 increase each year.

MR. DOUGLAS: Well, I'll withdraw the question.
I think the record —

THE COURT: I so rule.

BY MR. DOUGLAS:

Q Now, what is the top salary, gross salary, that you assume for Mrs. Feldman?

A I assumed the top gross salary of \$16,000 per year.

Q Why was it that you concluded that there would be no increases beyond that point?

A I concluded there would be no increases beyond that point largely because I had, in effect, pushed her out to 1994, and again it is a matter of judgment as to how far one would go with this. And again by assuming a \$500 increase [287] or increment and by not increasing her consumption allowances during this period, I felt I was being generous.

THE COURT: What age was that?

THE WITNESS: She was twenty-five at age of death. It appears to be forty-eight years of age.

Q (By Mr. Douglas) So you assume that from forty years on she would receive no increases in salary?

A I have made no assumptions about increases in salary, that's correct. One could make an assumption about increases in salary if one chooses to do so. But the discount rate which I applied would be rather heavy at that stage.

Q Just a minute, before we get to the discount rate.

A Yes, sir.

Q After forty-eight, I take it that it would be tenable under your analysis to continue to increase her salary?

A It's tenable.

Q And the reason why you did not increase her salary?

A The reason I did not increase her salary was by the time she got to that age I had decided — again a matter

of judgment — as to the fact that this was about as far as I could comfortably go; and I admit it is a judgment. I might have gone to 1995 or 1993.

But all during this time, why, then I am giving her an increase in income, which is not matched by an increase in [288] the consumption expenditures allocable to maintenance of life. In other words, a real income increase.

Q I am directing my questions, Doctor, only to gross income.

A Yes, sir.

Q Isn't it a fair statement to make that some people at age forty-eight get increased salaries?

A Yes, sir.

Q I suppose that's even true in the academic profession, isn't it?

A Well, yes, to some degree.

Q But in any event, whether or not you get increases after forty-eight depends upon the nature of the work and the quality of the work that is being performed and the opportunities and the ability to pay?

A Now, last, the ability to pay on the part of the employer. Go ahead. Yes, sir.

Q So in analyzing a person's potential earning capacity after forty-eight it is very difficult to lay down some kind of overall standard, isn't it?

A Yes, sir.

Q You don't have a great deal of confidence in the proposition that after forty-eight she would be limited at \$16,000, do you? This is really your own opinion?

A Well, you're putting words into my mouth. What I [289] said was that beyond forty-eight years of age, why, then I have not chosen to give any increases in salary. That's all I've said.

Q Yes. But why did you choose not to?

A Because I felt by that time — and I admit it's a matter of judgment — that by that period or that point in time at least, why, then I would have been basically unable to have argued that a person could be increasingly at a salary much beyond the rate at which level that she has.

I see no testimony, no analysis, no data which would suggest that she would be making much more than \$16,000 year.

Q But, Doctor, when you say "no testimony" —

A I'm sorry. I should say I have seen no data, statistical data.

Q And, in fact, you had not been here when those witnesses testified?

A That's correct.

Q Or having read the deposition?

A I have no read the deposition; that's correct.

Q Well, wouldn't you say in analyzing a person's future earning capacity after forty-eight one would have to look at those factors?

A One would have to look at those factors, but one might also look at the fact that on the average the in-[290] creases in income of people when they reach ages forty-eight and beyond, in fact forty-five and beyond, slow down considerably.

Q They slow down, do they? What do they show beyond that age?

A Well, a female from forty-five to fifty-four may earn another three or four hundred dollars possibly a year, but she would also have additional expenses to incur.

Q We are still talking about gross income.

A I realize that, sir.

Q Now, are you telling me that the figures which you

used show a gross annual increase of approximately \$300 a year for females?

A No, sir. What I am saying to you is that it is possible to experience some increases beyond that.

Q Now, you have a table in front of you?

A I have a table in front of me which shows some increases between forty-five and fifty-four, yes.

Q And what is the table that you have?

A The table in front of me shows that between forty-five and fifty-four, \$6,786.

Q May I look at that, Doctor?

A Go ahead.

Q Well, why didn't you include those increases in your calculations?

A Because I did not include any further increases in [291] my calculations for the express reason that I chose to stop at that point because I did not increase the maintenance of life expenditures.

In other words, what I, in effect, did was suggest that her real income would rise above \$500 a year.

Q But you didn't include anything for gross income after forty-eight?

A That's right.

Q Even though the statistics indicate that they would?

A The implied assumption, of course, would be that the real income of the individual would increase more than \$500 per year.

Q We are not talking about real income. We are talking about gross income.

A Well, we're talking about gross income, sir, but we are talking about a situation in which I have not allowed for inflationary increases in income.

Q I'm aware of that.

A All right, okay. And under those conditions I would not have given her an increase in income.

Q What is the magic about the age forty-eight?

A No magic about age forty-eight.

Q Well, why did you pick it?

A I could have picked forty-six, forty-five, forty-seven.

[292] Q Why would you have picked forty-five or forty-seven?

A I have no judgment based upon forty-eight at all.

Q Don't you think there would be a lot of women in their fifties who would feel your testimony was not very accurate?

A I don't know, sir.

Q Do you agree with me that merit increases over time are related to base pay?

A I have no opinion.

Q You haven't studied the matter?

A I have no opinion, sir.

I have not studied the matter, that is correct. I am only familiar as it operates in the academic world, with merit increases.

Q Isn't that a rather critical point, because each year under your proposal she would be getting the same increase on merit?

A That's right.

Q Even though her base pay would be increasing?

A Well, she would be getting \$500 a year increases, that's correct. The same incremental increase, that's right. Absolute increase, that is correct.

Q Turn to Page 4, if you will, Doctor, of your report.

A Surely.

[293] Q You refer to a higher standard of living in the Washington, D.C.-Maryland-Virginia area.

A That is correct.

Q What is a higher standard of living?

A Well, a higher standard of living is defined by the Department of Labor as a total budget, including all personal tax payments, of \$16,345.

Q And that was your starting point?

A That is correct, sir.

Q Now, then to arrive at what you assign for living expenses to Mrs. Feldman you subtracted recreation, didn't you?

A No, sir. I added recreation back in, the recreation allowance.

Q Well, perhaps it was my fault.

You've just stated that the 16,345 figure was a total budget.

A That 16,345 would be a total budget for a family of four living in the Washington, D.C. area.

Q Right. Now, would that include non essential transportation?

A It would include food, housing, transportation.

Q That wasn't my question, Doctor.

A It would include transportation. Whether it is non essential or not, I don't know.

[294] Q And would it include anything parents might spend for private schooling for their children?

A Not necessarily.

Q Well --

A No. As far as I know, it would not. But I cannot testify to that one way or the other, sir.

Q I'll accept that.

Would it include gifts to support a parent?

A No, it would not include that. The gifts to support a parent on Page 5 were an additional \$941 which I ex-

cluded from my calculations of the maintenance of life. I did not include those in that.

Q How about entertaining of friends, would it include that?

A There's no way of knowing whether it would include that or not.

Q You can't tell from —

A You cannot tell from the data.

Q You can't tell from the data precisely what is included in that, can you?

A You can tell from the data that it requires food, housing, transportation, clothing, personal care, medical care and family consumption. What you can tell from the data and what the Bureau of Labor Statistics advises you is that if you will take a scale factor of .35 and apply it to [295] that consumption figure, you will have a number which is as close as one can get to a statistical average of the amount an individual would have to spend in order to maintain himself in terms of the basic consumption expenditures which he would make.

Q Well, that's a very interesting statement, but it wasn't what I asked.

A Well, I'm sorry.

Q What I asked, Doctor, was you don't know all the items that go in to make the so-called higher standard of living total budget, do you?

MR. MOLLER: I'm going to object, your Honor. He already testified exactly what went into it.

THE WITNESS: I did, sir.

MR. MOLLER: And there is an Exhibit D which further portrays that.

I believe the question has been answered.

THE COURT: Well, he has answered it. He says he has already answered it.

What is this factor that you apply to consumption?

THE WITNESS: Yes, sir. What it is —

THE COURT: What is it, what is the number?

THE WITNESS: Well, the number is .35. 35 per cent of what is necessary to maintain a family of four is [296] necessary to maintain a single individual. This comes from the — I need the scale factor, the other exhibit.

THE COURT: That is, you are talking about each adult, then?

THE WITNESS: No, sir. The family of four figure, the \$12,002 is a figure for a family of four; two children and two adults.

THE COURT: So four can live cheaper than one?

THE WITNESS: Four can live cheaper than one. 35 each.

THE COURT: Per each?

THE WITNESS: Per each.

BY MR. DOUGLAS:

Q Doctor, could you look at Page 5 of your testimony?

A Yes, sir.

Q You say in the second paragraph: "The scale for a husband and wife under thirty-five years of age is forty-nine per cent"?

A That is correct, yes.

Q Now, why wouldn't the wife then be half of that amount, or 24 per cent?

A Why wouldn't the wife be half of that amount? I don't know why the wife wouldn't be half that amount.

Q Well, why did you assign 35 per cent to her?

[297] A I assign 35 per cent because the scale factor, if you look at the other table, says that for an individual under thirty-five years of age, 35 per cent of what is necessary to maintain four is necessary to maintain one.

Q Is that a person living alone, though?

THE COURT: To maintain a single individual?

THE WITNESS: To maintain a single individual, that's correct.

Q (By Mr. Douglas) Well, you know perfectly well that Mrs. Feldman was not living alone.

A That is correct.

Q So that figure is too high, isn't it?

A No, it is not. It is a personal — it is an income figure of .35 based on the assumption that the individual would have to spend that kind of money to maintain his own standard of living.

Q But you are assuming that she was living by herself, is that it?

A I'm assuming it is .35 per cent of 12,002. I'm simply using what the Department of Labor suggests that one uses in order to apply a scale factor for an individual if he were to consume a percentage of what a four-family unit would consume. That's all I'm doing.

Q That's a person living alone?

A That's a person's living expenditures exclusive of [298] gifts and contributions, life insurance and other occupational expenditures.

Q But is it not a person living alone?

A It's an unrelated individual, yes.

Q Well, why didn't you divide the 49 per cent in two and get 24 per cent for Mrs. Feldman, instead of the 35?

A The reason I didn't was because a person living alone

is likely, according to the Department of Labor, to use 35 per cent of \$12,002 to maintain himself, or consume.

Q Do you believe that expenditures increase in relation to personal income?

A Yes, expenditures increase in relation to personal income that's correct. Like I know they do.

Q If a person makes more, then he or she probably spends more?

A That's correct.

Q And may spend things on trips, or readings, or things of that kind?

A That is correct.

Q That they might not be able to afford and is non essential to maintain life?

A Well, if the question is what is essential to maintain life. The higher standard of living in this case could be essential to maintaining life.

Q Why is that?

[299] A \$12,002 maintaining a life for a life in which one is accustomed to living under that kind of income.

Q So you have made your allocation on the basis of what is one accustomed to living, is that right?

A I made my allocation basically on the fact that this particular couple could easily afford a higher standard of living, a standard of living which in effect buys a reasonable amount of food, clothing, shelter. And "reasonable amount" means something somewhat above poverty.

Q Reasonable related to income?

A Related to income, yes. But income up to a point at which beyond the Department of Labor makes no attempt to go. That is, they do not include in their analysis what would be called an extraordinarily high standard of living. They say higher standard of living.

Q Have you computed, on Page 6, what the deduction would be if you used 24 rather than 35 per cent?

A No, I have not. It looks like it would be about — well, I'll have to do it. About 3, roughly.

Q Now, would you turn back to Page 5?

A Yes, sir.

Q Do you see the item under the second line and above the third line that says, "Add back deductions 1450?"

A Yes, sir.

Q Where did that come from?

[300] A 1450 was one-half the personal exemption, \$1,500 — I'm sorry; one personal exemption and one-half the standard deduction.

Q Well, my arithmetic is that 750 and 750 makes 1500?

A That's correct. It's an error in the calculation. I apologize for the error.

Q Would this require changes in your tables on Page 8?

A It would require slight changes; \$50 net figure. What that would make in terms of overall rates, I don't know.

Q You haven't computed it, of course?

A No, sir. I completed this rather late at night.

Q I understand. Now, you took ten years off for Mrs. Feldman's child rearing?

A That's correct.

Q That's really a matter of personal choice, isn't it?

A That's correct.

Q Why did you select ten?

A I selected ten years because of the fact that if the children were approximately spread four to five years apart it would require ten years before both are ready for a full day of school; approximately ten years. I could have used twelve.

Q Weren't you informed of the testimony by Mr. Feld-

man to the effect that his wife, and he also, were planning [301] on two children, had thought she would take four to eight years off?

A Four to eight, eight, ten, twelve.

Q It doesn't make any difference?

A Well, it makes a difference. You can take and make a judgment as to what it would be. I'm not in a position of deciding whether or not an individual wants to spread his children over four years, six years, eight years, ten years or twelve years.

I took ten years. I could have taken eight.

Q But in computing the potential loss of future earning capacity, isn't that a matter of individual decision-making?

A Yes, it is. It's a matter of individual decision-making to the extent that one spaces the children the way in which one wishes to do so, yes.

I could have assumed twelve. I didn't.

Q Why did you assume that they would be spread four to five years apart?

A Matter of judgment, sir. No other reason. I could have used —

Q What is the judgment that leads you to conclude that a family with two children would spread their children four or five years apart?

A Well, if the truth be known, in effect I suppose that [302] extends from the fact that I simply have my own children four to five years apart. So I probably just put it in there by, in a sense, a thought that this is a possibility.

So were eight years, so were four years, so were twelve years. I mean, one has to use judgment in all of these matters.

Q Turning to investment rates, you have assumed, I guess, 7 or is it 6?

A 7 and 6. I used two calculations.

Q Which is your preferred figure?

A Well, shall I elaborate?

Q Why don't you give us the answer and then elaborate.

A All right. My preferred figure would be 7, but I would accept 6.

The reason why, I think became evident this morning in Cross-examination in testimony, which I was here for, in which a situation was raised as to whether or not you should have a discount factor of 7 per cent, or 6 per cent, or whether you should allow for inflation or what have you.

The point of fact is that today investments which are of relatively low risk earn well in excess of 7 per cent. Now, this means that a sum of money will be awarded as of a point in time and at that point in time it seems to me — and this I'm basing upon my judgment with considerable experience as a financial person — that if one were to invest [303] that sum of money he would probably want to space it out in order to hedge against changes somewhat in interest rates.

And one way of doing it is to spread the maturities around. And it is quite conceivable that in the future if interest rates were to slip a little bit and you were to find an issue mature, why, then you might have to take a lower rate of return on it.

Consequently, I was not disposed to walk in and say basically that the bill rate is the rate which one would prefer to use. What I said was to go back and lower it below the risk free rate.

Q You could live as a professional with either figure?

A That's correct.

Q Now, we are looking into the future, aren't we?

A Yes, sir.

Q We are looking a long time into the future?

A Yes, sir.

Q And this is a big and a varied country?

A Right.

Q And we've had a lot of changes in it?

A Yes, sir.

Q The investment rates haven't always been at 7 per cent, have they?

A No, they have not.

Q You are talking really about what the situation is [304] at present?

A That is correct.

Q And as a professional economist you do feel that that is all that is required in looking in the future, to take the present rates?

A No, I didn't say that. I said, in effect, that one would want to look at the — would take great consideration as the rates exist today, simply because of the fact that if you were to assume that interest rates were to decline then you would put your money today in Triple A Corporate Bonds at 8.23.

If you were to assume that they were going to rise, you would, in turn, put your money all into ninety day treasury bills — if you want a risk free rate.

Q Now —

A May I finish, sir? Do you mind?

Q Go ahead.

A What I'm saying, in effect, is that one doesn't know what's going to happen, as such. They could go up, they could go down. The point being that if he spreads his risk around a bit in terms of maturities, then in effect he is allowing, by using the 7 or 8 per cent rate, the possibility of a decline if you per chance were to have a maturity and had to reinvest it at, say, 7 per cent, or instead of 9.5, or whatever the rate is, 8.23.

[305] Q But my point is this: I take it that you exclude the

historical pattern with respect to past investment rates in projecting for the future?

A I didn't say I excluded them, sir.

Q No. But your figures are based on present rates, are they not?

A They are lower than the present rates.

Q Did you look back to take any average over the past twenty years?

A I took a look back quite a number, several years. I even pointed out in the paper the bill rates in 1960, which were very low.

I pointed out on Page 2, I pointed out the time deposit changes. Four per cent was standard in the early 1960's. You can document this very easily. I pointed out 7½ per cent on savings and time deposits —

Q I can read the page.

A All right.

My point being, sir, that essentially what I was saying was that I would not accept an 8 or an 8.23 per cent rate of interest as a basis for discount. I was quite happy to live with 7 or 6.

Q But historically in the past the rates have been, at times, below 7 and 6 per cent, have they not?

A They have been in the past, yes, sir.

[306] Q Right. And you are looking at the situation now?

A I am, sir. And I'm also saying that if they decline I have taken that into consideration.

Q By not going to the top?

A That's right. In fact, I've gone below; well below it.

Q We are looking towards thirty to forty years hence.

A Yes, sir.

Q Do you believe that in predicting interest rates over that time it is not essential to look at the past rates?

MR. MOLLER: Well, I am going to object to that, your Honor.

We have already been into this thing. He said he has looked at the past rates.

A I have looked at the past rates.

Q (By Mr. Douglas) You didn't average them out, though?

A No, I did not average them out. I don't believe it's essential to do so.

Q Do you believe we are in a particular economic situation now where interest rates are going to continue at 7 per cent for the next forty years?

A I couldn't predict for the next forty years, but my point is that if I were to invest a sum of money today and if I were assuming they were going to decline within twenty [307] years, I would walk off and invest them in Triple A Corporate Bonds because all that would happen would be, if they declined, I'd have one whale of a capital gains in them when I sold the bonds.

Q Do you know any statistics on what the unsophisticated investor invests in, so far as corporate bonds are concerned?

A Well, the unsophisticated investor, yes, I can tell you some data. I didn't have it in front of me.

I teach a course at Yale on the securities market and I have taught corporate finances as my basic specialty. The point of fact is, and I would have to if I could bring the data in, but —

Q You don't have that data?

A I do not have the data here. So I'm only testifying on the basis of my credentials as a financial person.

The point of fact is that individuals have bought in recent years more corporate bonds than they have bought in the past at the bond market.

Q When you say "individuals", who are you talking about?

A I'm talking about an individual like you or me and is a person, any individual, has bought more corporate bonds than they have in the recent past simply because the interest rates have been attractive.

[308] Q Do you consider yourself an unsophisticated investor?

A No, sir. Far from it.

Q Well, that was my impression.

THE COURT: Do you consider yourself a sophisticated investor?

THE WITNESS: I don't know as I consider myself a sophisticated investor. Sophisticated investor is one who knows won't make mistakes.

THE COURT: Do you know any sophisticated investors who have lost a lot of money in the past two or three years?

THE WITNESS: Yes, a lot of them that have, sir.

THE COURT: Do you know any of the mutual funds that have made any in the last two or three years?

THE WITNESS: The point is, sir, that what has happened in the last few years is that the bond rate, the yield on Triple A obligations has approximated the long term growth rate in dividends and capital gains on common stocks.

BY MR. DOUGLAS:

Q What impact does inflation have on your calculations?

A The impact of inflation on my calculations? I excluded, tried to make every effort to exclude any impact of inflation upon the income and expense patterns.

[309] Q How about under investment rates?

A On investment rates? Well, the impact of inflation upon investment rates, they could send them up a bit. But the point of the matter is that if they did send them up a bit, if you have a sum of money to invest today you get the effect of it immediately in the interest rate.

Q What is the gross sum on Page 10 under the column "Net loss in earning capacity"?

A I haven't calculated that. I haven't calculated it, sir.

I don't believe that it's necessary to calculate, unless you really want it calculated. The reason why is because we are talking about present value of money.

Q And is there any allowance for cost of living in any of these pages on 9 and 10?

A Cost of living, sir?

Q Yes. 10 and 11.

A No, sir.

MR. DOUGLAS: Your Honor, if I could have about a five minute recess, I could just see if there are any other questions I need.

THE COURT: Why don't you go over there and see what you can do.

MR. DOUGLAS: Okay.

(Pause)

[310] BY MR. DOUGLAS:

Q If you turn to Page 10 there is a reference at the bottom of the page to a book you wrote.

A Yes, sir.

Q What relationship does that have with —

A The rest of it?

Q Yes.

A Well, in calculating the numbers my own particular book carries present value tables which have been calculated on a computer, available for you to look at to —

Q Excuse me. Are you suggesting I could look at it today?

A If you'd like to look at present value tables in my book, I'd be happy to let you look at them.

Q No.

A I have them here.

The thing that it does say is that they are only carried out for so many years. In other words, I did not have sufficient tables.

Now, at the time when I was making the calculation I had only my tables available to me and my Hewlett-Packard 80, which is an investment calculator and in which I can make the calculations. Therefore, what I did was from those years out I took the thing on the basis of the Hewlett-Packard 80.

Then I checked them when I got a hold of another [311] book at my office, "Kant & Kant Compound Interest Annuity Tables", which are spread out over the entire period, and I double checked them against them and they are the same numbers, out to five or six decimal places.

Q Now, you testified on Direct Examination that you had worked on two or three calculations of accident?

A That's correct, sir.

Q Were they deaths?

A Yes, sir.

Q And were they in connection with this crash?

A One.

Q Which one was that?

A Mr. Robinson.

Q And for whom did you prepare that?

A I prepared that for the same attorneys.

Q How about the other one?

A The other one was prepared for another firm, Valentine J. Sacco.

Q Were they representing the plaintiff or the defendant in that case?

A They would be representing the defendant.

Q And are the basic approaches the same in those cases?

A I don't remember whether they are exactly the same. Yes, they are similar to. I mean different numbers. They [312] are different individuals.

MR. DOUGLAS: That's all I have.

MR. MOLLER: I have no question, unless your Honor has some questions.

THE COURT: Just one.

THE WITNESS: Yes, sir.

BY THE COURT:

Q On page 10, these net loss in earning capacity, that's after deducting a figure which you took for living expenses?

A That's correct, sir.

Q Out of the table?

A That's correct, sir.

THE COURT: All right.

MR. MOLLER: I have nothing.

THE COURT: Okay.

MR. MOLLER: Thank you, Dr. Curran.
(Witness excused.)

MR. MOLLER: The defendant rests, your Honor.

THE COURT: Shall I put a green ticket on this and hold it for thirty days, is that it?

MR. DOUGLAS: Yes, your Honor.

We did want to put, if we could, Mr. Malasky on for two questions on rebuttal.

THE COURT: Okay.

[313] ARNOLD MALASKY, recalled as a witness, having been previously duly sworn, was further examined, and testified as follows:

DIRECT EXAMINATION
BY MR. DOUGLAS:

Q Mr. Malasky, we have had a lot of talk today about cost of living and inflation. Assume a 4½ per cent inflation rate, and further assume a 6 per cent investment rate, and applying those throughout the entire range of your calculations what would the 1971 present value be of Mrs. Feldman's loss of earnings?

A The value as of 1971 of her loss of net income under those assumptions would be \$251,693. This is instead of the figure that I came up using a 1½ per cent rate of \$253,424.

MR. DOUGLAS: That's all I have.

CROSS-EXAMINATION
BY MR. MOLLER:

Q Well, that is based on your overall loss without — excuse me a minute — that is based on your overall gross loss, without taking any deductions of 583,000; correct?

A What do you mean deduction to 583?

Q That figure that you just read is based upon this figure on Exhibit C of 583,000?

A No. It's a net income after.

[314] Q How did you get it?

A I took the same assumed starting salary, 11,517, the same assumed initial personal living expenses, 2,150, and the same assumed federal income tax rates.

I assumed that in addition to merit salary increases that the personal living expenses and gross salary would be increased at the rate of 4½ per cent a year to reflect infla-

tion. And this would affect gross salary, personal living expenses and federal income tax.

I then used a 6 per cent interest rate, since the 1½ per cent that I used originally would not be consistent with those assumptions, and came up with the 251,693 as a figure similar to this, present value of net income.

Q In other words, you are not saying that your calculation that I asked you to make based upon her actual net loss of \$365,000 at 6 per cent, namely, \$102,000, should be changed to \$253,000, are you?

A Well, the 365 is not an actual net loss. It is an estimate.

Q Well, if you take out what you have as a gross salary and you take out her cost of living, correct?

A Yes.

Q And her federal income tax, correct?

The figure which you yourself come up with on net income is 365,000?

[315] A Yes. But it is not an actual figure. It is an estimate.

Q Well, this whole Mickey Mouse world of expertise —

A Yes, I understand. The only thing that as to actually what specifically happened, I'm just objecting to that word. But —

Q My point is \$365,779 discounted at 6 per cent is \$102,000?

A That is correct.

MR. MOLLER: Thank you.

BY THE COURT:

Q You have submitted something alternate here, an alternate calculation right?

A Yes.

Q By adding an inflation factor to salary?

A Yes.

Q Over and above the annual stage increase?

A Right.

Q Adding an inflation factor to estimated living expenses. Recalculating the income tax or not?

A Yes.

Q Recalculating the income tax.

A It is consistent throughout the same; the 4 $\frac{1}{4}$ per cent inflation was applied through everything.

THE COURT: All right.

(Witness excused.)

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